

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 15—Aboveground Storage Tanks—Release Response

PROPOSED RULE

10 CSR 20-15.030 Site Characterization and Corrective Action

PURPOSE: The Missouri Clean Water Commission is responsible for adopting rules necessary to prevent, control and abate potential discharge of contaminants to the waters of the state. Releases of petroleum and other regulated substances from aboveground storage tanks and associated piping, primarily from ASTs located at service stations, marinas, bulk plants, and fleet fueling facilities, have been documented throughout the state. While the applicable Department of Agriculture regulations focus on prevention of such releases, there are currently no specific requirements for release response measures that must be taken to protect the environment and the waters of the state. The commission has determined release response measures to be necessary because, once a release has occurred, the nature of the contaminants is such that, without appropriate release response measures, there is a substantial threat that the discharged contaminants will pollute the waters of the state. The intent of the release response measures required by the rules in this chapter is to prevent any discharged contaminants from polluting the waters of the state. This rule describes the first steps that shall be taken to abate or stop the spread of contaminants, mitigate and determine the extent of the release, and requires spilled free product to be collected and removed from the environment immediately. Further, this rule specifies the procedures for soil and groundwater investigations or characterization of the release at the site, and lists the requirements for corrective action plans for cleanup of releases from aboveground storage tank sites. In addition, this rule specifies the type of information required to be submitted by the owner or operator to the department, upon completion of these phases of activities.

(1) Site Characterization.

(A) At the request of the department in response to a release, the owner or operator of an AST shall conduct a site characterization to include a full investigation of the release, the release site and the surrounding area to determine the full extent and location of soils contaminated by the release and the presence and concentrations of contamination in the groundwater if the Initial Release Response Report submitted in compliance with 10 CSR 20-15.020 documents any of the following:

1. Contaminated groundwater or surface water above action levels;
2. Contaminated soils above action levels;
3. Presence of free product; or
4. Some other characteristic determined by the department to require further investigation because of its potential to result in pollution of the waters of the state or a potential threat to human health and the environment.

(B) An owner or operator of an AST shall follow a written procedure for conducting the site characterization of the release site. The department's Site Characterization Guidance Document may be used as a written procedure. Other written procedures may be used with prior written approval from the department.

(2) Site Characterization Reporting. A site characterization shall include, at a minimum, information about the site and the nature of the release. The site characterization report containing this information shall be submitted to the department within forty-five (45) days of date of the department's request to conduct site characterization in subsection (1)(A) of this rule. The department may

approve an alternative reporting schedule. This information shall include, but is not limited to, the following:

(A) Data regarding the type of product released and an estimate of the quantity;

(B) Data from available sources or site investigations concerning the following factors:

1. Surrounding land use;
2. The hydrogeologic characteristics of the site and the surrounding area;
3. Use and approximate locations of wells affected or potentially affected by the release;
4. Surface and subsurface soil conditions at the site and the immediate surrounding area;
5. Locations of subsurface utilities;
6. The proximity, quality, and current and potential future uses of nearby surface and ground water;
7. The potential effects of residual contamination on nearby surface and ground water; and
8. Any additional relevant information assembled while carrying out the steps required in 10 CSR 20-15.040 and this rule.

(3) Corrective Action. Based upon the results of the site characterization, the owner or operator of the AST may be required to submit to the department a plan for corrective action that provides for adequate protection of human health and the environment, as determined by the department. The owner or operator of the AST shall modify the plan as necessary to meet this standard.

(A) If a plan is required, the owner or operator shall submit the plan within forty-five (45) days or according to a schedule and format established by the department.

(B) Even if not requested by the department, an owner or operator of an AST may elect to submit a corrective action plan.

(C) Once a plan has been submitted, the department will review the corrective action plan to ensure that implementation of the plan will adequately protect human health and the environment. In making this determination, the department will consider the factors listed in subsection (2)(B) of this rule.

(D) Upon written approval of the plan, or as directed by the department, the owner or operator of the AST shall implement the plan, including any modifications to the plan made by the department. The owner or operator shall evaluate and report the results of implementing the plan in accordance with a schedule and in a format established by the department.

(E) An owner or operator of an AST may begin remediation of soil and groundwater prior to approval of the corrective action plan provided they:

1. Notify the department in writing of their intention to begin cleanup;
2. Comply with any conditions imposed by the department, including cessation of remedial activities or mitigation of adverse consequences from cleanup activities; and
3. Incorporate all self-initiated remedial measures into the corrective action plan submitted to the department for approval.

(F) An owner or operator of an AST shall follow a written procedure for establishing a corrective action plan. The department's Corrective Action Guidance Document may be used as a written procedure. Other written procedures may be used with prior written approval from the department.

AUTHORITY: sections 319.137 and 644.026, RSMo 2000. Original rule filed Sept. 13, 2001.

PUBLIC COST: This proposed rule is estimated to cost affected state agencies and political subdivisions one hundred twenty-six thousand seven hundred forty-four dollars (\$126,744) in Fiscal Year 2002 and every year thereafter for administration of and compliance with the new rule. A detailed fiscal note has been filed with the secretary of state.

PRIVATE COST: This proposed rule is expected to cost private entities \$4,038,000 in Fiscal Year 2002 and every year thereafter for compliance with the requirements of the new rule. A detailed fiscal note has been filed with the Secretary of State.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Clean Water Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on November 28, 2001 in Room 450 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Clean Water Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak shall be postmarked by midnight on November 14, 2001. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments shall be postmarked by midnight on Wednesday, December 5, 2001. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: Department of Natural Resources

Division: Clean Water Commission

Chapter: Aboveground Storage Tank – Release Response

Type of Rulemaking: Proposed Rulemaking

Rule Number and Name: 10 CSR 20-15.030 Site Characterization and Corrective Action

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Number affected ¹	Item	Itemized Cost
Publicly-owned AST facility storing petroleum products or other regulated substances for resale purposes and having a release or suspected release of regulated substances to the environment requiring submission of a site characterization report and preparation and implementation of a corrective action plan	1	Preparation of a site characterization report	\$13,550
		Preparation and implementation of a Corrective Action Plan	\$26,800
		Total Public Entity Compliance Cost	\$40,350
Missouri Department of Natural Resources	1	Documenting submitted Site Characterization Reports	\$49,310
		Documenting submitted Corrective Action Plans	\$37,084
		Total Public Entity Administration Cost	\$86,394
		Total Annual Cost to Public Entities to Administer and Comply with the requirements of 10 CSR 20-15.030	\$126,744²

¹All publicly-owned AST facilities storing petroleum products or other regulated substances for resale purposes are potentially affected by this rule. As of July 2001, the Missouri Department of Agriculture has 8 publicly-owned marinas and 66 publicly-owned airports registered in their database of facilities with ASTs statewide. It is assumed for the purposes of this fiscal note that marinas and airports constitute the entire universe of publicly-owned AST facilities potentially subject to the requirements of this rule. Of this entire universe, it is assumed for the purpose of this fiscal note that only 1 publicly-owned AST facility will have a reportable release and subsequently be required to implement a Site Characterization Plan or a Corrective Action plan within a year of the effective date of this rule.

²This is an annualized cost. Because the duration of the rule cannot be estimated, an annualized aggregate is provided. All numbers from the worksheet below have been rounded off to the nearest whole dollar.

III. WORKSHEET

1. Personnel Costs for Merit Employees are calculated using step "O" of the state fiscal year 2001 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 27.5% with the additional amount added to the annual salary to account for fringe benefits. \$8045 is added for equipment and expenses. This sum is then multiplied by 22.15% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours in a Full-Time Equivalent (FTE) All adjustment factors are based on current information provided by the hazardous waste program budget staff. Calculations for estimating the personnel costs of county and municipal employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Hourly rate for Clerk Typist II = \$20.88
 Hourly rate for Environmental Specialist III = \$33.96
 Hourly rate for Environmental Specialist IV = \$37.80
 Hourly rate for Environmental Section Chief = \$42.29

2. Based upon the experience of department staff, it is assumed that 1 of the 2 publicly-owned AST facilities required to conduct Initial Release Response Measures, as noted in the public entity fiscal note for 10 CSR 20-15.020, will be required to conduct a site characterization to determine the extent of the release.
3. The department further assumes that the 1 publicly-owned AST facility requested to conduct a site characterization will also be required to prepare and implement a Corrective Action plan.
4. Public entity costs for the purposes of this fiscal note include compliance costs for any public entities required to conduct a site characterization or to implement a corrective action plan (Compliance costs) and the department's cost to administer the requirements of the rule (Administration costs). The cost for the department to administer this rule includes the cost of receiving and reviewing any site characterization reports required by this rule as well as any corrective plans required by this rule.
5. **Staff time for review of site characterization reports and/or corrective action plans**

A. Review time

Based on task time correlation, the department estimates it will take an environmental specialist III 12 hours to receive, analyze, and respond to either the site characterization report or the corrective action plan submitted in compliance with this rule, whether submitted by a private entity or a public entity. The private entity compliance costs are counted in the private entity fiscal note.

Environmental Specialist III salary	=	\$3,254.00/month
Hourly Salary	=	\$33.96
\$33.96 x 12 hours	=	\$407.52
121 characterization reports submitted + 91 corrective action plans submitted = 212 site characterization reports and/or corrective action plans reviewed by department		
212 x \$407.52	=	\$86,394.24

Total cost to Missouri Department of Natural Resources to receive, analyze, and respond to site characterization reports and/or corrective action plans submitted in compliance with this rule = \$86,394.24

6. **Site characterization costs.** It is assumed that 1 of the 2 publicly-owned AST facilities required to prepare and submit an Initial Release Response Measures Report will be required to conduct site characterization activities and submit a report. Based on past cleanups of leaking underground storage tanks, the estimated cost to complete a site characterization and prepare and submit a Site Characterization Report is \$13,550, as follows:

Geoprobe = \$6000 for the 1st day x 1 day = \$6000

Geoprobe = \$4000 for the second day x ½ day =	\$2000
Sampling analysis = \$100 per sample x 12 samples =	\$1200
Project manager = \$75 per hour x 38 hours =	\$2850
Final report \$1500 per report x 1 =	\$1500

Total site characterization costs = \$13,550

1 publicly-owned AST facilities required to conduct a site characterization x \$13,550

Total public entity compliance cost for requirement to conduct a site characterization = \$13,550

7. **Corrective Action costs.** Although there are other available techniques, costs can vary widely depending on the selected remedy and the extent of the release. Therefore, for the purposes of this fiscal note, excavation of the contaminated soil is assumed to be the selected method of remediation. It is assumed that the 1 publicly-owned AST facility required to prepare and submit a Site Characterization report will also be required to prepare, submit, and implement a Corrective Action plan with excavation of contaminated soil as the selected remedy. Based on department records, the estimated compliance cost for contracted work to excavate contaminated soil at a release site is as follows:

Project manager = \$75 per hour x 38 hours =	\$2850
Other labor = \$50 per hour x 42 hours =	\$2100
Dig and haul = 60 yards x \$325 per cubic yard =	\$19500
Hauling fees = \$85 per hour x 10 hours =	\$850
Final report \$1500 per report x 1 =	\$1500

Total corrective action costs = \$26,800

1 publicly-owned AST facility required to implement a Corrective Action plan x \$26,800 = \$26,800

Total public entity compliance cost for requirement to prepare and implement a Corrective Action plan = \$26,800

IV. ASSUMPTIONS

1. Because the duration of the rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are AST facilities storing regulated substances for resale purposes and having a reportable release or suspected release to the environment. Department staff assume that the current rate of approximately 3 reports per week of spills at AST facilities will increase slightly due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of regulated ASTs subject to the requirements of this rule.
3. Fiscal year 2001 dollars are used to estimate the costs.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural ResourcesDivision: Clean Water CommissionChapter: Aboveground Storage Tanks -- Release ResponseType of Rulemaking: Proposed RuleRule Number and Name: 10 CSR 20-15.030 Site Characterization and Corrective Action

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Number likely to be affected ¹	Item	Itemized Cost
Privately-owned AST facilities storing petroleum products or other regulated substances for resale purposes and having a release or suspected release of regulated substances to the environment requiring submission of a site characterization report and/or Corrective Action Plan	120	Site Characterization Implementation and Report	\$1,626,000
		Corrective Action Plan Implementation and Report	\$2,412,000
		Total annual private entity compliance cost	\$4,038,000²

¹All privately-owned AST facilities storing petroleum products or other regulated substances for resale purposes are potentially affected by this rule. As of July 2001, the Missouri Department of Agriculture has 2109 privately-owned AST facilities registered in their database of ASTs statewide. Of this entire universe, it is assumed for the purpose of this fiscal note that only 120 privately-owned AST facilities will have a reportable release and subsequently be required to implement a Site Characterization Plan or a Corrective Action plan within a year of the effective date of this rule.

²This is an annualized cost. Because the duration of the rule cannot be estimated, an annualized aggregate cost is provided.

III. WORKSHEET

- Based upon the experience of department staff, it is assumed that 75% or 120 of the 160 privately-owned AST facilities required to conduct Initial Release Response Measures and report, as noted in the private entity fiscal note for 10 CSR 20-15.020, will be required to conduct a site characterization to determine the extent of the release. Based on this assumption, the department assumes 120 privately-owned AST facilities will be required to conduct a site characterization and submit a report to the department.
- The department further assumes that 75% or 90 of the 120 privately-owned AST facilities requested to conduct a site characterization will also be required to prepare and implement a Corrective Action plan.
- Site characterization costs.** As noted in the assumption above, the department assumes that 120 of the 160 privately-owned AST facilities required to prepare and submit an Initial Release Response Measures Report, as noted

in the Private Entity Fiscal Note for 10 CSR 20-15.020, will be required to conduct site characterization activities and submit a report. Based on past cleanups of leaking underground storage tanks, the estimated cost to complete a site characterization and prepare and submit a Site Characterization Report is \$13,550, as follows:

Project manager = \$75 per hour x 38 hours =	\$2850
Geoprobe = \$6000 for the 1 st day x 1 day =	\$6000
\$4000 for the second day x ½ day =	\$2000
Sampling analysis = \$100 per sample x 12 samples =	\$1200
Final report \$1500 per report x 1 =	\$1500
Total site characterization costs =	\$13,550
120 privately-owned AST facilities x \$13,550 =	\$1,626,000

Total private entity compliance cost for requirement to conduct a site characterization = \$1,626,000

Corrective Action costs. As noted in the assumption above, the department assumes that 90 of the 120 privately-owned AST facilities required to prepare and submit a Site Characterization Report, as noted above, will be required to prepare, submit, and implement a Corrective Action Plan. Although there are other available techniques for remediation of contamination at an AST release site, costs can vary widely depending on the selected remedy. Therefore, for the purposes of this fiscal note, excavation of the contaminated soil is assumed to be the method of remediation submitted in the Corrective Action Plan. Based on department records, the estimated compliance cost for contracted work to excavate contaminated soil at a release site is as follows:

Project manager = \$75 per hour x 38 hours =	\$2850
Other labor = \$50 per hour x 42 hours =	\$2100
Dig and haul = 60 yards x \$325 per cubic yard =	\$19500
Hauling fees = \$85 per hour x 10 hours =	\$850
Final report \$1500 per report x 1 =	\$1500
Total corrective action costs =	\$26,800
90 privately-owned AST facilities x \$26,800 =	\$2,412,000

Total private entity compliance cost for requirement to prepare, submit, and implement a Corrective Action Plan = \$2,412,000

V. ASSUMPTIONS

- Because the duration of the rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.
- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are AST facilities storing regulated substances for resale purposes and having a reportable release or suspected release to the environment. Department staff assume that the current rate of approximately 3 reports per week of spills at AST facilities will increase slightly due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of regulated ASTs subject to the requirements of this rule.
- Fiscal year 2001 dollars are used to estimate the costs.
- Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
- Estimates assume there will be no new or sudden changes in technology, which would influence costs.
- This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.

7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Division of Family Services
Chapter 19—Energy Assistance

PROPOSED AMENDMENT

13 CSR 40-19.020 Low Income Home Energy Assistance Program. The Division of Family Services proposes to amend section (3) to reflect changes made in income levels based on federal poverty guidelines.

PURPOSE: This amendment is being made to adjust the monthly income amounts on the LIHEAP Income Ranges Chart.

(3) Primary eligibility requirements for this program are as follows:

(D) Each household must have a monthly income no greater than the specific amounts based on household size as set forth in the Low Income Home Energy Assistance Program (LIHEAP) Income Ranges Chart. If the household size and composition of a LIHEAP applicant household can be matched against an active food stamp case reflecting the same household size and composition, monthly income for LIHEAP will be established by using the monthly income documented in the household's food stamp file.

[LIHEAP INCOME RANGES CHART

Monthly Income Amounts

<i>Household Size</i>	<i>Income Range</i>	<i>Income Range</i>	<i>Income Range</i>	<i>Income Range</i>	<i>Income Range</i>
1	\$0-174	\$175-348	\$349-522	\$523-696	\$697-870
2	\$0-234	\$235-468	\$469-702	\$703-936	\$937-1,172
3	\$0-271	\$272-542	\$543-813	\$814-1,084	\$1,085-1,356
4	\$0-326	\$327-652	\$653-978	\$979-1,304	\$1,305-1,634
5	\$0-382	\$383-764	\$765-1,146	\$1,147-1,528	\$1,529-1,912
6	\$0-438	\$439-876	\$877-1,314	\$1,315-1,752	\$1,753-2,190
7	\$0-493	\$494-986	\$987-1,479	\$1,480-1,972	\$1,973-2,468
8	\$0-549	\$550-1,098	\$1,099-1,647	\$1,648-2,196	\$2,197-2,746
9	\$0-604	\$605-1,208	\$1,209-1,812	\$1,813-2,416	\$2,417-3,024
10	\$0-660	\$661-1,320	\$1,321-1,980	\$1,981-2,640	\$2,641-3,301
11	\$0-715	\$716-1,430	\$1,431-2,145	\$2,146-2,860	\$2,861-3,579
12	\$0-771	\$772-1,542	\$1,543-2,313	\$2,314-3,084	\$3,085-3,857
13	\$0-827	\$828-1,654	\$1,655-2,481	\$2,482-3,308	\$3,309-4,135
14	\$0-882	\$883-1,764	\$1,765-2,646	\$2,647-3,528	\$3,529-4,413
15	\$0-938	\$939-1,876	\$1,877-2,814	\$2,815-3,752	\$3,753-4,691
16	\$0-993	\$994-1,986	\$1,987-2,979	\$2,980-3,972	\$3,973-4,969
17	\$0-1,049	\$1,050-2,100	\$2,101-3,149	\$3,150-4,198	\$4,199-5,247
18	\$0-1,105	\$1,106-2,210	\$2,211-3,315	\$3,316-4,420	\$4,421-5,525
19	\$0-1,160	\$1,161-2,320	\$2,321-3,480	\$3,481-4,640	\$4,641-5,803
20	\$0-1,216	\$1,217-2,432	\$2,433-3,648	\$3,649-4,864	\$4,865-6,081

LIHEAP INCOME RANGES CHART

Monthly Income Amounts

Household Size	Income Range	Income Range	Income Range	Income Range	Income Range
1	\$0-179	\$180-359	\$360-539	\$540-719	\$720-895
2	\$0-242	\$243-485	\$486-728	\$729-971	\$972-1,209
3	\$0-280	\$281-561	\$562-842	\$843-1,123	\$1,124-1,402
4	\$0-338	\$339-677	\$678-1,016	\$1,017-1,355	\$1,356-1,692
5	\$0-396	\$397-793	\$794-1,190	\$1,191-1,587	\$1,588-1,981
6	\$0-454	\$455-909	\$910-1,364	\$1,365-1,819	\$1,820-2,270
7	\$0-512	\$513-1,025	\$1,026-1,538	\$1,539-2,051	\$2,052-2,560
8	\$0-570	\$571-1,141	\$1,142-1,713	\$1,714-2,284	\$2,285-2,849
9	\$0-628	\$629-1,257	\$1,258-1,886	\$1,887-2,515	\$2,516-3,139
10	\$0-686	\$687-1,373	\$1,374-2,060	\$2,061-2,747	\$2,748-3,428
11	\$0-743	\$744-1,487	\$1,488-2,231	\$2,232-2,975	\$2,976-3,717
12	\$0-801	\$802-1,603	\$1,604-2,405	\$2,406-3,207	\$3,208-4,007
13	\$0-859	\$860-1,718	\$1,719-2,578	\$2,579-3,438	\$3,439-4,296
14	\$0-917	\$918-1,834	\$1,835-2,752	\$2,753-3,670	\$3,671-4,586
15	\$0-975	\$976-1,950	\$1,951-2,926	\$2,927-3,902	\$3,903-4,875
16	\$0-1,033	\$1,034-2,066	\$2,067-3,100	\$3,101-4,134	\$4,135-5,165
17	\$0-1,091	\$1,092-2,182	\$2,183-3,274	\$3,275-4,366	\$4,367-5,454
18	\$0-1,149	\$1,150-2,298	\$2,299-3,448	\$3,449-4,598	\$4,599-5,743
19	\$0-1,207	\$1,208-2,414	\$2,415-3,622	\$3,623-4,830	\$4,831-6,033
20	\$0-1,264	\$1,265-2,528	\$2,529-3,793	\$3,794-5,058	\$5,059-6,322

AUTHORITY: section 207.020, RSMo [1994] 2000. Emergency rule filed Nov. 26, 1980, effective Dec. 6, 1980, expired March 11, 1981. Original rule filed Nov. 26, 1980, effective March 12, 1981. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 21, 2001, effective Oct. 1, 2001, expires March 29, 2002. Amended: Filed Sept. 21, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Family Services, PO Box 88, Jefferson City, MO 65103. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program**

PROPOSED AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA).
The division is adding section (9).

PURPOSE: The proposed amendment adds section (9). This amendment will establish the Federal Reimbursement Allowance (FRA) Assessment for SFY 2002 at 5.20%.

(9) Federal Reimbursement Allowance (FRA) for State Fiscal Year 2002. The FRA assessment for State Fiscal Year (SFY) 2002 shall be determined at the rate of five and twenty hundredths percent (5.20%) of the hospital's net operating revenues and other operating revenues defined in paragraphs (1)(A)12., and 13., as determined from information reported in the hospital's 1998 base year cost report. The SFY 2002 FRA Assessment shall be prorated as an estimate of the SFY 2003 FRA Assessment until such time as the regulation establishing the SFY 2003 FRA Assessment is effective.

AUTHORITY: sections 208.201, 208.453[, RSMo 1994] and 208.455, RSMo [Supp. 1999] 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For the intervening history, please consult the *Code of State Regulations*. Emergency amendment filed June 8, 2001, effective June 18, 2001, expires Dec. 8, 2001. Amended: Filed June 8, 2001. Amended: Filed Sept. 11, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate for SFY 2002.

PRIVATE COST: This proposed amendment is expected to cost private entities \$389,999,017 in SFY 2002. A fiscal note containing details of the estimated cost of compliance is published with this proposed amendment.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the

Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 13 -- Department of Social Services

Division: 70 -- Division of Medical Services

Chapter: 15 -- Hospital Program

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
131	Hospitals	\$389,999,017

III. WORKSHEET

The fiscal note is based on establishing the SFY2002 FRA assessment percentage at 5.20%.

IV. ASSUMPTIONS

The SFY 2002 FRA assessment is based on net patient revenues and other operating revenue of approximately \$7.5 billion multiplied by 5.20%. The 131 hospitals reported above include 41 hospitals that are owned or controlled by state, county, city or hospital districts. The impact on these hospitals is \$52,473,122.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.031 List of Excludable Drugs for Which Prior Authorization is Required. The division proposes to amend section (3).

PURPOSE: The Division of Medical Services is proposing to amend this rule by adding three drug or category of drug listings to allow those products to be reimbursable under the Missouri Medicaid Program only with prior authorization and clarifies the uses allowed for another listing.

(3) List of drugs or categories of excludable drugs which are restricted to require prior authorization for certain specified indications—

<u>Drug or Category of Drug</u>	<u>Allowed Indications</u>
Amphetamines	Attention Deficit Hyperactivity Disorder Narcolepsy Hypersomnolence due to opioid/opiate analgesic therapy associated with advanced cancer pain
Barbiturates (with the exception of phenobarbital and mephobarbital and methabarbital which do not require prior authorization)	All medically accepted uses
Isotretinoin	Noncosmetic uses
Itraconazole, oral	Noncosmetic uses
Orlistat	Dyslipidemia
Retinoic Acid, topical	Noncosmetic uses
Retinoid analogs, topical	Noncosmetic uses
Terbinafine, oral	Noncosmetic uses

AUTHORITY: sections 208.153 and 208.201, RSMo [1994] 2000. Original rule filed Dec. 13, 1991, effective Aug. 6, 1992. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 1, 1996, effective Oct. 30, 1996. Amended: Filed May 27, 1999, effective Dec. 30, 1999. Emergency amendment filed Nov. 21, 2000, effective Dec. 1, 2000; expired May 29, 2001. Amended: Filed June 29, 2000, effective Feb. 28, 2001. Amended: Filed Sept. 14, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment is estimated to cost private entities in the aggregate less than five hundred dollars (\$500) annually. Providers/practitioners are reminded that they are not entitled to Medicaid reimbursement for a service which they provide to the general public at no charge, including prior authorization services. The Surveillance and Utilization Review Subsystem Unit will closely monitor adherence to this program limitation.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled to be held for 10:00 a.m., November 27, 2001, in Conference Room 202, 615 Howerton Court, Jefferson City, Missouri.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Department of Social Services
Division: Division of Medical Services
Chapter: Chapter 20 - Pharmacy Program
Type of Rulemaking: 13 CSR 70-20.031
Rule Number and Name: List of Excludable Drugs for Which Prior Authorization is Required.

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,333		less than \$500 annually

III. WORKSHEET

IV. ASSUMPTIONS

Provider shall not charge Medicaid for services rendered on a no-cost basis to the general public. If this assumption is not correct, the Division of Medical Services requests that providers send written documentation to:

Division of Medical Services
P.O. Box 6500
Jefferson City, MO 65102-6500
ATTN: Gregory A. Vadner

so that the fiscal note estimate can be amended in the Order of Rulemaking.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program**

PROPOSED AMENDMENT

13 CSR 70-20.034 List of Non-Excludable Drugs for Which Prior Authorization is Required. The division is proposing to amend section (2).

PURPOSE: The Division of Medical Services is proposing to amend this rule by adding three drug or category of drug listings to allow these products to be reimbursable under the Missouri Medicaid Program with prior authorization.

(2) List of drugs or categories of drugs which are restricted to require prior authorization for certain specified indications—

<u>Drug or Category of Drug</u>	<u>Allowed Indications</u>
Abortifacients	Termination of pregnancy resulting from an act of rape, or incest or when necessary to protect the life of the mother
Brand name Non-Steroidal Anti-Inflammatory Agents, oral	Medically accepted uses following acceptable trial of non-restricted alternatives
Butorphanol, nasal spray	Override of quantity restriction allowed for medically accepted uses
Drugs used to treat sexual dysfunction	Sexual dysfunction
Histamine 2 Receptor Antagonists	Medically accepted uses
Human growth hormone products	Unrestricted use by patients 18 years of age and younger and medically accepted uses for patients older than 18 years of age
Ketorolac, oral	Short-term treatment of moderately severe acute pain following injection of same entity
Linezolid, oral	Medically accepted uses
Modafanil	Narcolepsy
Non-sedating antihistamines	Unrestricted use by patients 18 years of age and younger and medically accepted uses following acceptable trial of unrestricted alternatives for patients older than 18 years of age
Proton Pump Inhibitors	Medically accepted uses

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment is estimated to cost private entities in the aggregate less than five hundred dollars (\$500) annually. Providers/practitioners are reminded that they are not entitled to Medicaid reimbursement for a service which they provide to the general public at no charge, including prior authorization services. The Surveillance and Utilization Review Subsystem Unit will closely monitor adherence to this program limitation.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled to be held for 10:00 a.m., November 27, 2001, in Conference Room 202, 615 Howerton Court, Jefferson City, Missouri.*

AUTHORITY: sections 208.152, 208.153 and 208.201, RSMo [1994] 2000. Emergency rule filed Nov. 21, 2000, effective Dec. 1, 2000, expired May 29, 2001. Original rule filed June 29, 2000, effective Feb. 28, 2001. Amended: Filed Sept. 14, 2001.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Department of Social Services

Title: _____

Division of Medical Services

Division: _____

Chapter 20 - Pharmacy Program

Chapter: _____

13 CSR 70-20.034

Type of Rulemaking: _____

Rule Number and Name: List of Non-Excludable Drugs for Which Prior
Authorization is Required.

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,333		less than \$500 annually

III. WORKSHEET

IV. ASSUMPTIONS

Provider shall not charge Medicaid for services rendered on a no-cost basis to the general public. If this assumption is not correct, the Division of Medical Services requests that providers send written documentation to:

Division of Medical Services
P.O. Box 6500
Jefferson City, MO 65102-6500
ATTN: Gregory A. Vadner

so that the fiscal note estimate can be amended in the Order of Rulemaking.

Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 13—Rules for the Establishment of a Missouri
No-Call Database

thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PROPOSED AMENDMENT

15 CSR 60-13.060 Methods by Which a Person or Entity Desiring to Make Telephone Solicitations Will Obtain Access to the Database of Residential Subscribers' Notices of Objection to Receiving Telephone Solicitations and the Cost Assessed for Access to the Database. The attorney general is amending subsection (1)(B).

PURPOSE: This amendment to 15 CSR 60-13.060(1)(B) increases the amount persons or entities desiring to access the no-call database will pay for access to the whole database from twenty-five (\$25) per quarter to twenty-five (\$25) per quarter for each Missouri area code. But, the amendment also allows persons or entities desiring to access only certain parts of the no-call database, by area code, to do so by paying the prescribed fee. Finally, the amendment clarifies that the copy the attorney general will provide them will be on computer disk, and it corrects a syntactical error.

(1) A person or entity desiring to make telephone solicitations to residential subscribers residing or living in Missouri may obtain a copy of the no-call database for his, her or its lawful use, or for the lawful use by his, her or its employees, or for the lawful use by his, her or its independent contractors for use in their business, so long as the independent contractor is regularly associated with the person or entity and is engaged in the same or related type of business as the person or entity, by doing the following:

(B) Submitting the signed confidentiality agreement along with payment in *[the]* **an amount *[of]* equal to twenty-five dollars (\$25) per quarter for each Missouri area code** to the Attorney General's Office *[of]* **for providing *[the]* a computer disk** copy of the no-call database. **Those persons or entities desiring to obtain access to only part of the no-call database may do so by submitting the signed confidentiality agreement along with a request designating by area code the portion or portions of the no-call database they desire and providing payment in the amount of twenty-five dollars (\$25) per quarter per area code to the Attorney General's Office for providing a computer disk copy of the requested portion of the no-call database.**

AUTHORITY: section 407.1101, RSMo 2000. Original rule filed Sept. 28, 2000, effective March 30, 2001. Amended: Filed Feb. 28, 2001, effective Aug. 30, 2001. Emergency amendment filed Sept. 14, 2001, effective Oct. 1, 2001, expires March 29, 2002. Amended: Filed Sept. 14, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities approximately seventy-eight thousand six hundred dollars (\$78,600) in the aggregate during FY 02, and approximately three hundred fourteen thousand four hundred dollars (\$314,400) annually thereafter.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Attorney General, Jeremiah W. (Jay) Nixon, c/o Ronald Molteni, Assistant Attorney General, PO Box 899, Jefferson City, MO 65102. To be considered, comments must be received within

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 15 - Elected Officials

Division: 60 - Attorney General

Chapter: 13 - Rules for the Establishment of a Missouri No-Call Database

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 15 CSR 60-13.060 - Methods by Which a Person or Entity Desiring to Make Telephone Solicitations Will Obtain Access to Database of Residential Subscribers' Notices of Objection to Receiving Telephone Solicitations and the Cost Assessed for Access to the Database.

II. SUMMARY OF FISCAL IMPACT

Estimated number of entities which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Annualized estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
524 *	* Home improvement, alarm companies, funeral homes/monument companies, long distance phone companies, local exchange phone companies, suppression list companies, information companies, heating and cooling, mortgage companies, insurance agents, real estate companies, stockbrokers, magazine publishing and direct marketing corporations, carpet cleaners, chiropractors, car dealers, vacation/travel related companies, resort/time share companies, roofing and remodeling, insurance-health/life, financial organizations, certified public accountants, window companies, hearing aid companies, bottled water companies, photography, Internet service providers, for-profit companies representing handicapped/disabled, credit cards, satellite TV/cable companies, credit card protection companies, fine arts/orchestra, dance clubs, appliance repairs company, gambling organizations, Tupperware/Mary Kay/special utensils, lawn care, newspapers, voice mail/beeper services.	\$ 314,400

* The numbers set out in the summary of Fiscal Impact regard the annual cost for the life of the rule. The numbers cannot be estimated with greater specificity than contained in this fiscal note because business entities often vary their operating practices. The cost in the aggregate could exceed \$500 but are unquantifiable. The fiscal note serves notice to businesses that utilize telephone solicitations that they may incur costs which will vary greatly dependent upon their use of telephone solicitations. For purposes of this amendment we have drawn on the Attorney General's Office experience in the first two months of operation of the no-call database and assumed that all subscribers would elect to subscribe to the entire no-call database. There are currently six area codes used in Missouri. The high water mark so far has been 524 subscribers to the no-call database. The actual cost could be significantly less if small businesses who conduct telephone solicitations within their own area code alone subscribe to receive only a portion of the no call database.

III. WORKSHEET

Type of costs per entity	FY 02	FY 03	FY 04	FY 05
Database acquisition cost	\$ 150	\$ 600	\$ 600	\$ 600
Implementation of database by business entity	*	*	*	*
Exclusion determination process	**	**	**	**
Totals per entity	\$ 150***	\$ 600***	\$ 600***	\$ 600***
Totals for all affected entities	\$78,600***	\$314,400** *	\$314,400** *	\$314,400** *

Businesses using telephone solicitations should expect annual costs after FY 05 for the life of the rule as set out in FY 05.

*1. As indicated in the Assumptions, this cost is impossible to determine without knowing the business set-up, but is expected to be a nominal cost.

**2. As indicated in the Assumptions, this cost is impossible to determine without knowing the business set-up, but is expected to be a nominal cost.

***3. Includes any charges in the implementation of the database and exemption determination process.

IV. ASSUMPTIONS

1. All business entities who use telephone solicitations are required to obtain and use the no-call database for their business operations. The annual cost of obtaining the entire database is \$150/quarter or \$600/year. The business entities are required to use the list as of July 1, 2001. The business entities will be assessed the yearly fees FY 02.

2. Determining the number and types of entities affected by these rules cannot be estimated with greater precision than appear herein because the rule could apply to any business entity that uses telephone solicitations. Additionally, the needs of specific businesses will change and so will the use of telemarketing. In an effort to provide information to all the potential entities impacted, we have drawn on our early experience in operating the no-call database. Missouri has had a high of 524 entities subscribing to obtain the database on a quarterly basis. Missouri currently uses six area codes.

3. The second portion of potential costs consists of the implementation of the database into its daily operations. Each business entity will exercise its own control on how to use the database. For that reason, the cost of implementation, if any, will vary and cannot be estimated with greater specificity than appears in this fiscal note. The remaining cost issue is the determination of whether a particular entity will incur costs to determine its exemption status. Again, what entities will use "telephone solicitations" will vary greatly. For this reason, though each entity's cost may be nominal, aggregate costs are not quantifiable with greater specificity than appears within this fiscal note. The database acquisition and implementation costs will be annual charges recurring in perpetuity. The exemption process should be a one time charge, assuming no change in a business entity's business practice. The annual costs commenced in FY 01 and continue for the indefinite life of the rule.

Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.015 Administration and Command of the Private Security Section. The board is amending sections (1)–(3).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) Board of Police Commissioners. The St. Louis Board of Police Commissioners (referred to as the board) is established by state statute and consists of five (5) members, four (4) of whom are appointed by the governor. The mayor of the City of St. Louis serves as *exofficio* member. The board has sole charge and control of the metropolitan police department of the City of St. Louis and of the licensing, regulation and discipline of all **corporate security advisors**, private security officers, private watchmen and couriers in the City of St. Louis. Private detectives are licensed by the license collector's office of the City of St. Louis, not by the board of police commissioners. The board relegated that responsibility to the city license collector's office.

(2) Private Security Section. The private security section is responsible for the interviewing, investigating, processing, licensing, inspection and supervision of all persons working or acting as licensed security officers or any other variety of titles in the City of St. Louis. The private security section is further responsible for issuing and transferring all such licenses, for reinstatements, for periodic inspection of license holders, for liaison with all suppliers of security personnel in the city, for maintenance of a personnel file on all applicants in the City of St. Louis and for publishing, within the department, information of all terminations of employment of security personnel. The private security section also conducts background investigations on private detective/investigator applicants as requested by the license collector's office. **A processing fee for these background investigations will be charged by the private security section to all applicants for a private investigator's license.** The decision to issue a license is made by the license collector's office.

(3) Private Security Personnel. The St. Louis Metropolitan Police Department Private Security Program has *[three (3)]* **four (4)** distinct classifications of personnel. A definition of each classification is listed as follows:

(A) Corporate security advisor. A person employed to provide all services rendered by a private security officer, as well as other specialized corporate security services related to the protection of his/her employer's/principal's resources and personnel. A licensed corporate security advisor may carry a firearm and protective devices in accordance with the guidelines established in these rules. S/he shall be authorized to exercise the same police powers granted to private security officers while on his/her employer's/principal's property. However, the corporate security advisor's power and authority shall not be restricted to that property, but shall be coextensive with the geographic limits of the City of St. Louis (as defined in 17 CSR 20-5.055);

[[A)] **(B) Private security officer.** A person employed with certain police powers (as defined in 17 CSR 20-2.065) to protect life or property on or in designated premises. **Generally, [T]the private security officer's powers exist only within the established property owned or leased by the contracting employer and to incidents occurring on the premises. The private security officer may carry a firearm providing this individual is qualified (as defined in**

17 CSR 20-2.055). Authorization to carry a firearm is designated on the badge/identification *[[ID]]* card. The private security officer, whether armed or unarmed, may carry a *[slapper,]* baton, nightstick, *[aerosol tear gas]* **pepper mace** and handcuffs **after training requirements have been satisfied;**

[[B)] **(C) Courier.** A person employed to carry out the assignment of protecting and transporting property from one designated area to another. The person shall be in an approved military style uniform. The courier has no power of arrest. The courier may carry a firearm provided this individual is qualified (as defined in 17 CSR 20-2.055). Authorization to carry a firearm is designated on the badge/*[[ID]* **identification** card; and

[[C)] **(D) Private watchman.** A person employed without police powers and without authorization to carry weapons or protective devices. This individual will perform the tasks of observation and reporting on or in a licensed premises or designated area. This may include patrolling the public street. The private watchman has a distinctive grey, military **style** uniform. The private watchman has no power of arrest. Note: Only the private security officer and private courier classifications will be permitted to hold two (2) licenses. Each classification is licensed separately and functions as a distinct entity. (This licensing does not include the private watchmen classification.)

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 2—Private Security Officers

17 CSR 20-2.025 Definitions. The board is amending sections (3), (5), (7) and (8), adding new sections (9) and (11); and renumbering and amending sections (10), (12), (13), (14), and (15).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(3) **Badge/identification [ID] card**—A card that is issued to security personnel bearing a picture of, and information about, the person to whom the card is issued.

(5) **Designated area**—The established property owned or leased to which a licensed security person is assigned by his/her employer or contracting company. **Generally, [T]the authority of a private security [person] officer exists only within this designated area and applies only to incidents occurring within that area. This includes the term "licensed premises."**

(7) Hot pursuit—*[The] Non-vehicular* pursuit of suspects for on-view felonies only. **Vehicular pursuits are not permitted.**

(8) License—The document which is issued to *[each of the]* licensed security personnel by the board of police commissioners authorizing the holder to perform specific security duties in the City of St. Louis as designated by *[his/her] their* license. **The “Metro” license currently issued allows the holder to perform security duties in St. Louis County as well as in the City of St. Louis.**

(9) Licensed premises—Refer to definition of “designated area.”

[[9]] (10) Protective devices—*[The only approved instruments used for personal protection are slapper,]* **Instruments approved for personal protection**—baton, nightstick, *[aerosol tear gas]* **pepper mace** and handcuffs. **Training is required before these items may be carried on duty.**

(11) Resignation—The voluntary inactivation of a security license by the individual holding that license.

[[10]] (12) Revocation—The *[inactivating]* **inactivation** of a license by the board of police commissioners *[for just cause]* **in accordance with the rules and procedures set out herein.**

[[11]] (13) Suspension—The temporary *[suspension]* **inactivation** of a license pending an administrative investigation *[determined]* **and review** by the board of police commissioners.

[[12]] (14) Termination—The *[inactivating]* **inactivation** of a license through resignation, cancellation, expiration or revocation.

[[13]] (15) Weapons—Instruments used as protective devices, as listed in section *[[9]]*, (10) including a firearm, *[slapper,]* baton, nightstick, *[aerosol tear gas]* **pepper mace** and handcuffs.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 2—Private Security Officers**

PROPOSED AMENDMENT

17 CSR 20-2.035 Licensing. The board is amending sections (2)–(4) and (6)–(9), and deleting the form that follows this rule in the *Code of State Regulations*.

PURPOSE: *This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.*

(2) Standards. Each applicant for a license to work as a private security officer in the City of St. Louis shall meet the standards set by the board of police commissioners, which require that an applicant—

(E) Not be licensed as a private security officer and *[a private detective at the same time]* **private detective or a process server in any state at the time of application for a license;**

(G) *[Who has served time on active or reserve duty in any of the Armed Forces of the United States must be in possession of an Honorable Discharge or a General Discharge Under Honorable Conditions. An Undesirable Discharge, a Discharge Under Dishonorable Conditions or a Discharge Other than Honorable Conditions will disqualify the applicant;]* **Has received an Honorable Discharge or a General Discharge Under Honorable Conditions, when applicable. An Undesirable Discharge, a Discharge Under Dishonorable Conditions or a Discharge Under Other Than Honorable Conditions will disqualify the applicant;**

(J) Be able to pass a character investigation by this department **as indicated through criminal record check;**

(M) Never have had a security license revoked **or denied** by another jurisdiction for a criminal law violation;

(3) Issuance/Denial of License. When an applicant has successfully completed the requirements set by the board of police commissioners, the board will issue a license. An applicant may be denied a license for any of the following reasons:

(B) Falsifying information on any of the forms provided by the private security section to establish eligibility. Applicants who falsify *[those]* **such** documents shall be ineligible to receive a private security officer license and cannot re-apply for at least six (6) months from the date the false *[information]* **application** was submitted;

(D) The references~~,~~ **and/or** employment background records~~,~~ **or both,** indicate a poor or unsatisfactory character or work record;

(E) Any facts or actions which make the applicant unsuitable or ineligible for licensing; *[and]*

(F) Resigned under investigation, resigned under charges or was discharged *[from the police force of the City of St. Louis]* **from any police force; and**

(G) **Has been denied a security license by any agency.**

(4) Notification of License Denial. Applicants and their employers **will**, in event of license denial, *[will]* be given a written notification **of the denial**. Specific reasons will be given to an applicant who appears in person at the office of the private security section. Applicants may appeal, in writing, to the board of police commissioners within thirty (30) days of denial notification. The appeal should contain a brief rebuttal of the reasons for denial. The board of police commissioners will then notify the applicant, in writing, of its final decision in the matter.

(6) Temporary License. If an applicant appears to meet the standards for licensing, the commander of the private security section may issue a temporary license. This permits the applicant to work until a formal license is issued by the board.

(B) A holder of a temporary badge~~/ID~~ **identification** card must wear the card at the breast of the outermost garment while on duty and must be attired in an approved military style uniform.

(C) A holder of a temporary license who transfers employment to another agency must return his/her temporary badge~~/ID~~ **identification** card to the private security section for issuance of a new badge~~/ID~~ **identification** card.

(D) A holder of a temporary license must return the temporary badge/**ID** **identification** card to the private security section at the time the formal license is issued.

(7) Secondary Employment License. *[A second license]* **Additional licenses** may be approved by the board of police commissioners and issued by the private security section to a private security officer who *[—/wishes to work for more than one (1) employer.*

(A) *[Works for a private entity (employer) and wants to take a second job working for a second private entity (employer); or]* A private security officer desiring a second license must present a letter of intent-to-hire from the secondary employer.

[(B) Is licensed to a security agency and also desires to work in a secondary job for a private employer.

1. A second license will not be issued to allow a security officer to work at two (2) security agencies.

2. A private security officer desiring a second license must present a letter of permission from the first (primary) employer and a letter of intent to hire from the (secondary) employer; and]

[(C)](B) A St. Louis Police Department computer inquiry will be made on each private security officer applying for a secondary license. If this inquiry reveals an open arrest record within the previous year, s/he will be required to obtain a certified copy of the final court disposition or a report from the circuit or prosecuting attorney. If the case is still open, the secondary license process will not be completed until final disposition is obtained.

(8) License Renewals. A private security officer's license is valid for one (1) year from date of issue and it must be renewed in the month it expires.

(B) A private security officer wishing to renew his/her license must report to the private security section in the month the license expires, bringing—

[1. The license which is about to expire;]

[2.] 1. A letter from his/her employer requesting renewal;

[3.] 2. Badge/**ID** **identification** card; and

[4.] 3. The fee for the renewal.

(C) If firearms-qualified, the private security officer wishing to renew a license must *[schedule for]* **provide proof of** requalification through an approved firearms course. **The private security officer must also submit a urine specimen for drug testing according to the provisions of these rules and regulations.**

(D) A license not renewed during the month it was issued automatically expires **on the last day of the month** unless the holder has applied to the commander of the private security section and received an extension of time. **Such extension will be noted with a sticker on the license. This sticker will indicate the adjusted expiration date of the license.**

(E) Applicants for license renewal will be required to annually attend a renewal training program consisting of seven (7) hours training in selected security subjects and departmental regulations.

(9) License Transfer. A license holder may work only for the company, agency or business entity named on the license. A license holder who changes employers *[must make sure that the new employer is named on the license]* **must transfer his/her license to the new employer before he/she begins working for the new employer.** In order to transfer a license from one *[(1)]* employer to another, the license holder must appear in person at the private security section and—

(A) Bring a current dated letter **issued** (no more than ten (10) days prior to application) from the new employer, addressed to the board of police commissioners, outlining the duties of the new job and requesting the transfer of license;

(B) Bring in license and badge/**ID** **identification** card;

(D) Will receive a new badge/**ID** **identification** card and license to the new company; and

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS Division 20—St. Louis Board of Police Commissioners Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.045 Personnel Records and Fees. The board is amending sections (1) and (2).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) Personnel Records. The private security section will maintain the personnel records of each license holder. *[This]* **Such** record, and all information pertaining to the individual, shall be the property of the private security section. Applicants and license holders are personally responsible for immediately notifying the private security section of any change in name, address, telephone number or employer.

(2) Fees. The board of police commissioners will establish, from time-to-time, a set of fees for various services provided by the private security section. The schedule of fees is posted in the private security section office. *[Fees are not returnable, except on the day they are paid.]* **No fees will be refunded for any reason after the date of application and must be paid in full at the time of application.**

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 1, 1988, effective July, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room

330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 2—Private Security Officers**

PROPOSED AMENDMENT

17 CSR 20-2.055 Training. The board is amending sections (1), (2) and (4)–(8).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) Exemptions. Applicants with prior law enforcement experience or accepted training shall be required to successfully complete only the firearms qualification. **Full-time state certified police officers and retired St. Louis City police officers will be exempt from the basic classroom training. They must still complete the firearms training.**

(2) Length and Content. The **classroom** training period consists of *[three (3)] two (2) days. [Within that period, seven (7) hours are devoted to firearms training, responsibility and liability.]* **The length and subject matter of the class is to be determined by the board.** Classroom activities consist of selected *[police]* **security** subjects and departmental regulations.

(4) Final Test. Each applicant must take a written test on the subject matter presented in class and must attain a passing score of at least seventy percent (70%).

(B) A second failure will cause the applicant to be *[disqualified] ineligible* for licensing. *[for a one (1)-year period from the date of the second examination. After this period, the applicant may reapply for licensing.]* **The applicant will be supplied with all training materials and allowed to take the basic class in thirty (30) days at his/her expense. Upon successful completion of the subsequent training and test, the applicant will be issued a license.**

(5) Firearms Qualification. On the firing range an applicant must display the ability to safely and properly handle his/her revolver and must achieve a score at or above the standards established by the board of police commissioners.

(A) An applicant who displays an inability to handle a revolver safely and properly will be disqualified from carrying a *[sidearm]* **firearm.**

(B) An applicant who does not attain the minimum score on the firing range will *[be given two (2) additional opportunities to qualify. The retest time will be determined by the department armorer]* **not be issued an armed license.**

(6) Unarmed Private Security Officer License. An applicant who does not wish to have an armed license or, who cannot attain the minimum required score on the firing range, may be issued a restricted license allowing him/her to work as *[an unarmed licensed]* **a private security officer without a firearm.**

(7) Training Fee. A *[nonrefundable]* training fee established by the board of police commissioners must be paid *[before an applicant is enrolled in a training session]* **at the time of application.**

(8) Oath or Affirmation. Prior to issuance of his/her license, the applicant must swear *[to uphold]* **or affirm** the following:

I DO SOLEMNLY SWEAR OR AFFIRM that I am a citizen of the United States, or a legal resident alien, that I will faithfully support the Constitution of the United States, the Constitution and Laws of the State of Missouri, and the Charter and City Ordinances of the City of St. Louis; that I have never been discharged from the police force of the City of St. Louis; that I have never been convicted of a felony; that I have no physical or mental disability or habit that disqualifies me from performing the duties of a Private Security Officer; that I will wear such dress, badge/[ID] identification card or emblem as the Board of Police Commissioners may from time-to-time [may] designate; that I will, to the best of my skill and ability, diligently and faithfully, without partiality or prejudice, discharge my duties according to the Constitution and Laws of the State of Missouri and Charter and Ordinances of the City of St. Louis; that I will strictly obey all lawful orders and regulations of the Board of Police Commissioners of the City of St. Louis, the Chief of Police, or any officer placed by them over me; that I will not cease to perform my duties until my resignation is accepted by the Board of Police Commissioners; that I will not become a member of, or affiliate myself with, any organization of any kind or character whatsoever, membership in which will or may impose upon me obligations inconsistent with the full performance of my duties as a Private Security Officer, or inconsistent with the oath herein taken to carry out the orders of the Board of Police Commissioners and to comply with its lawful orders, rules and regulations, or which will or may, in any degree interfere with the performance of my duties as a licensed security officer.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 16, 1990, effective June 28, 1990. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 2—Private Security Officers**

PROPOSED AMENDMENT

17 CSR 20-2.065 Authority. The board is amending sections (1) and (2).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) Authority. Private security officers have the authority to make an arrest and to search for and seize evidence in connection with the arrest, at the location, and during the time of their assignments,

under the same conditions as members of the police force [—] of the City of St. Louis as outlined below:

(C) For an offense not committed in the presence or view of the security officer, when s/he has probable cause to believe that the offense was committed by the person s/he is arresting; *[and,]*

(D) Off his/her licensed premises when in hot pursuit for an on-view felony *[is involved]*. (An on-view felony offense is *[an]* a felony offense the security officer sees committed~~(.)/~~);

(E) Off his/her licensed premises, but only within a two (2) block radius of said premises, unless expressly approved by the private security section, and while escorting employer's employees and visitors from said premises to their parked vehicles or other means of transportation;

(F) Off his/her licensed premises but only while escorting employer or employer's designee, by the most direct route, to and/or from a bank or other financial institution for the purpose of making a cash deposit or withdrawal; and

[[E]] (G) The authority granted private security officers **herein** is limited *[to designated areas only, and does not include such services]* and said limitations shall be strictly construed. **It does not permit private security officers to serve as bodyguards, *[escort,]* process servers or *[investigative service for lawyers engaged in criminal or civil activity]* investigators for attorneys.** Operators of security agencies *[engaged in security service]* should be aware of these restrictions *[and the consequences of a violation.]* and should also be aware that violation thereof *[Involvement in those activities]* could result in the suspension or revocation of a private security officer's license by the board of police commissioners.

(2) Arrests. An arrest is made by the actual restraint of the defendant or by his/her submission to the authority of the private security officer.

(A) *[No more force is to be used than necessary for overcoming resistance and only the minimum force necessary to effect an arrest is permissible.]* In making an arrest a private security officer should use only as much force as is reasonably required to achieve his/her lawful objective. Deadly force may never be used in defense of property only.

(C) Police officers from other jurisdictions, including St. Louis City marshals and St. Louis deputy sheriffs, who are serving or acting as private security officers do not possess police powers at the location of their assignments in the City of St. Louis unless licensed by the Board of Police Commissioners of the City of St. Louis.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS Division 20—St. Louis Board of Police Commissioners Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.075 Duties. The board is amending section (1).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) Duties. It is the duty of every licensed security officer~~(to —):~~

(A) **To** *[O]*observe and obey these regulations and to obey all lawful orders of any commissioned St. Louis police officer in all matters involving the need for police services;

(B) **To** *[A]*assist St. Louis police officers in preserving the peace or in taking **such** other action as may be necessary to effect an arrest at the location, and during the time, of his/her assignment;

(C) **To** *[C]*cooperate with St. Louis police officers in the performance of their duties.

1. Participation by licensed private security officers, on duty or off duty, in police action where police officers are on the scene, shall be limited to identifying themselves to the officer(s) and offering assistance.

2. The judgement of the officer(s) shall prevail in any situation where police are present. They are responsible for the proper handling and reporting of the incident in accordance with departmental policies.

3. Failure to cooperate with a St. Louis police officer may be cause for disciplinary action against a licensed private security officer.

4. Failure to assist a law enforcement agency or to aid in prosecution of a crime may be cause for disciplinary action against a licensed private security officer; and

(D) **To** *[N]*otify the St. Louis Police Department when an arrest has been made by the private security officer, to furnish all pertinent facts and evidence to any police officer(s), and to surrender to *[the]* **such** officer(s) custody of any prisoner **and any evidence related to the arrest.** A report of the incident will then be made by the police in the same manner as in other arrests.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS Division 20—St. Louis Board of Police Commissioners Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.085 Uniforms. The board is amending sections (1)–(4).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) *[The Board of Police Commissioners ruled that by January 1, 1990 no private security uniforms will resemble those of the St. Louis police officers.] No private security uniforms may resemble those of St. Louis police officers. The light blue shirt with dark blue jacket and trousers will not be duplicated. In addition, a company shoulder patch will be mandatory on all shirts, coats and jackets of private security personnel, clearly identifying them as employees of that agency.*

(2) All private security officers should be aware of the following guidelines:

(A) All private security officers are required to wear a uniform, which, at a minimum, shall consist of trousers or skirt, and shirt or blouse[, and uniform cap]. **The word "police" will not be displayed anywhere on the private security officer's uniform. This extends to police officers from other jurisdictions while working as security officers in the City of St. Louis;**

(B) All couriers wearing blue uniform trousers, skirts, shirts and jackets similar to those worn by the St. Louis Police Department must have their company shoulder patch affixed to either the left or right sleeve, approximately one inch (1") below the shoulder seam, clearly distinguishing them from [a] St. Louis police officers;

(C) The badge/identification *[(ID)]* card issued by the private security section of the St. Louis Metropolitan Police Department will be worn on the breast of the outermost garment, **in plain view**, while on duty and performing a *bona fide* security function for an employer;

(D) Security personnel may wear a company badge or emblem as devised by their employer. These badges and emblems bear the name of the employer and identify the individual as a private security officer. The *[name]* word "police" will not be used on the badge or emblem;

(G) The use of company vehicles for security purposes must conform with the established rules governed under city ordinance. The *[name]* word "police" will not be displayed on the vehicles.

(3) **Exemption from Wearing Uniform.** *[In rare instances, the board of police commissioners may exempt a licensed private security officer, upon written application by his/her employer, from the wearing of a uniform, the insignia, or both, provided by the board. This exemption may be granted upon a showing in writing by the employer that the wearing of the uniform or insignia hinders the efficient performance of security duties by the employee.] The board of police commissioners may exempt a licensed private security officer from wearing a uniform and/or displaying the department-issued badge/identification card while on duty. Such exemption must be requested by the employer in writing. Each licensed private security officer receiving exemption from the requirement of wearing a uniform may, during the period of the exemption, perform his/her duties as specified on the identification card. The identification card showing that the security officer has a uniform exemption must be carried while the security officer is on duty.*

(A) All letters requesting exemption from the wearing of a uniform or insignia, including proof of need, shall be addressed to the commander[, of the private security section by *[his/her]* the employer of the security officer.

(B) A uniform exemption identification will expire on the same date *[as]* the holder's license expires. To renew the exemption, a new letter of request shall be submitted to the commander of the private security section by *[his/her]* the employer **of the security officer.**

(4) *[Uniform Exemption Conduct. Each licensed private security officer receiving exemption from the requirement of wearing a uniform during the period of the exemption, may perform his/her duties, armed or unarmed, as specified in the ID card. If armed, s/he possesses the privilege granted uniformed private security officers of carrying an authorized loaded firearm on his/her person while traveling in either direction between place of residence and place of assignment by the most direct route. The same time limitation, of one (1) hour, is to be observed. The ID card granting the exemption must be carried by security personnel while on duty.] Armed Uniform Exemption. In rare instances the board of police commissioners may exempt an armed licensed private security officer, upon written application from his/her employer, from wearing a uniform and/or insignia provided by the board. The employer must show, in writing, that the wearing of a uniform or insignia hinders the efficient performance of security duties by the employee. These requests will be reviewed by the board of police commissioners. Note: A security officer receiving this exemption may perform his/her duties as specified on the identification card and may carry an authorized, loaded firearm on his/her person while performing security duties for the employer subject to the rules and regulations established by the board of police commissioners. A security officer licensed under these conditions is not authorized to carry the weapon on his/her person while traveling in either direction between place of residence and place of assignment and must unload the weapon and transport it according to existing laws and ordinances. Violation of any of these provisions renders the offender subject to penalties which can include license revocation.*

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS Division 20—St. Louis Board of Police Commissioners Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.095 Equipment. The board is amending sections (1)–(3).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) **Equipment Issue.** At the conclusion of the training period and upon final approval by the board of police commissioners, each

private security officer shall receive from the private security section one (1) badge/identification *[ID]* card, *[one (1) license]* and one (1) security officer's manual. These items are, and remain, departmental property. They must be returned to the private security section by any private security officer who resigns, is suspended, or has his/her license revoked.

(2) Equipment Responsibility. *[Each licensee deposits a fee for the department-issued badge/ID card and license. The fee is refundable to any security officer when his/her period of service ends, provided that the license is not revoked. During employment it is the responsibility of the security officer to care for and safeguard this departmental property.] During their employment it is the responsibility of security officers to care for and safeguard departmental property issued to them.*

(A) *[After the cost has been determined, all issued items of departmental property lost, stolen, damaged or destroyed must be replaced by the licensee.] All issued items of departmental property lost, stolen, damaged or destroyed must be replaced by the licensee.*

(B) The loss of any item must be immediately reported to the private security section. No formal police report is required. The private security officer then becomes responsible for appearing at the private security section *[to obtain and pay]* and paying for a replacement.

(C) Careless handling of *[departmental]* St. Louis Police Department property by a security officer may be *[subject to]* grounds for disciplinary action.

(3) Badge/*ID/Identification* Card. The badge/*ID/identification* card which is issued by the private security section to a licensed private security officer is an easily recognized symbol of authority and responsibility.

(A) The badge/*ID/identification* card, which is stamped with an issue date and an expiration date, *[also]* will also state whether the holder may be armed or must work unarmed. **The card will also indicate if the private security officer is authorized to carry a baton or nightstick.**

(B) This badge/*ID/identification* card must be worn over the breast on the outermost garment **in plain view**. It must be returned to the private security section upon resignation, suspension, **cancellation** or revocation of the license.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS Division 20—St. Louis Board of Police Commissioners Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.105 Weapons. The board is amending sections (1), (2), (4)–(8) and adding a new section (5).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the Board of Police Commissioners relating to licensed security officers.

(1) Limitations *[On]* on Carrying Weapon. *[A] An armed* private security officer licensed by the St. Louis Board of Police Commissioners may be permitted to carry on his/her person, an authorized firearm, while traveling in either direction by the most direct route (without deviation and/or not to exceed one (1) hour) between his/her residence and place of assignment provided s/he is—

(2) Private security officers who are authorized to carry their firearms to and from their place of residence have no authority to use their firearms during that travel period.

(A) **Except as provided above, a firearm and protective devices may only be carried by a security officer while on his/her licensed premises.**

(B) **A firearm and protective devices may not be carried off assigned premises for any nonduty related activities (lunch, fueling cars, personal relief, etc.).**

(4) Inspection and Registration. All firearms used by private security officers must be inspected by the department armorer **or his/her designee** and must be registered and on file in the private security section. **Armed security officers may only use a duty weapon which is personally owned by them, or owned by their agency.**

(B) Private security officers must carry double action .38 Special caliber revolvers. The carrying of any other caliber weapon, including automatics, derringers, .357 Magnums and shotguns is prohibited. **Only factory loaded, commercially available ammunition may be carried.**

(C) **For armed, uniformed security officers, /T/**the firearm shall be exposed and worn on a belt at the waist. No other methods such as a shoulder holster, ankle holster, **etc.**, shall be permitted in uniform.

(D) *[The firearm shall be worn on a belt at the waist.]* **For armed security officers on uniform-exempt status the firearm shall be worn on a belt at the waist.** No other methods, such as a shoulder holster, ankle holster, **etc.**, shall be permitted for uniform-exempt status.

(E) Private security officers are required to annually requalify with their firearms during the month of license renewal, **and at six (6)-month intervals.**

(5) Requirements for Police Officers from Other Jurisdictions Carrying Duty Weapons. Police officers from other jurisdictions working as security officers in the City of St. Louis may be permitted to carry their department duty weapon upon satisfying the following requirements:

(A) The officer must be a full-time employee of his/her agency and must submit a letter to the private security section from his/her department indicating that the officer is a full-time commissioned officer;

(B) The officer must be certified by his/her respective state with a minimum of six hundred (600) hours training at a state approved academy. A copy of the certification must be presented to the private security section at the time of application for the security license;

(C) The officer must present a letter from his/her department indicating the make, model and serial number of the weapon that they are allowed to carry while working for their department;

(D) The officer must present a letter from his/her department indicating a policy that requires the officer to requalify with the duty weapon a minimum of twice each year;

(E) The firearm must be approved by our department armorer and the armorer must indicate that the weapon has been approved and prepare a letter indicating approval of the weapon; and

(F) All other part-time police officers and reserve officers from other jurisdictions are required to carry a .38 caliber revolver while working security within the City of St. Louis and are required to successfully complete the firearms training program mandated by the board of police commissioners.

[(5)] (6) Discharge of Firearms. A private security officer may not discharge a firearm in the performance of his/her duties (other than for practice or training at a firing range or similar authorized location) except when—

(A) Reasonably necessary to protect him/herself or another from death or serious bodily harm; *or*, **Note: Security officers are not permitted to discharge their weapons to destroy any injured or dangerous animal unless their safety or the safety of a third party is directly threatened.**

[(B)] *A suspect resists to a degree that poses a threat to the life or body safety of the private security officer or others.*

[(6)] (7) Shots Fired Report. *[Upon firing his/her weapon, a]* A private security officer, **upon firing his/her weapon and/or using force to make an arrest**, shall notify the nearest police district and have an official police report prepared. The reporting officer will see that a copy of the police report is forwarded to the commander of the private security section.

[(7)] (8) Safety First Rules for Gun Handling. The licensed private security officer is responsible at all times for his/her weapon whether in or out of his/her possession. The following rules must be learned and obeyed:

(A) All weapons must be treated with the caution and respect due a loaded gun. Most accidents occur with a weapon thought to be unloaded;

(B) The weapon should be checked for ammunition each time it is handled;

(C) The barrel and action must be clear of obstruction before using the weapon;

(D) The weapon must be kept in good working condition;

(E) The weapon should not be drawn or pointed at any person unless the situation justifies *[that]* **such** action;

(F) When the weapon is unattended, it must be safe from children and curious people; and

(G) Ammunition carried on duty must be new factory-service ammunition. No reloads or wad cutter ammunition is permitted.

[(8)](9) Nonlethal Weapons. Private security officers may only carry the following nonlethal defensive weapons or equipment:

(A) *[Leather pocket baton or slapper]* **Pepper mace (o.c. spray), after completion of approved training;**

(B) *[Aerosol tear gas dispenser]* **Handcuffs, after completion of approved training;**

(C) *[Baton or night stick]* **Metal baton not more than twenty-six inches (26") long when fully extended and not weighing more than twenty-one (21) ounces, after completion of approved training; and**

(D) *[Handcuffs]* **Wooden nightstick not more than twenty-six inches (26") long and not weighing more than twenty-one**

(21) ounces, after completion of approved training. **Note: private security officers and corporate security advisors will only be authorized to carry an impact weapon after they have received training by board approved instructor. It is the responsibility of the employer to provide board approved training in the proper use of this equipment. An agency has the right to determine which of these items may be carried by its licensed security employees.**

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS Division 20—St. Louis Board of Police Commissioners Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.115 Field Inspection. The board is amending sections (2), (3), and (4).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the Board of Police Commissioners relating to licensed security officers.

(2) Field Inspections. All private security officers are subject to inspection by officers from the St. Louis Metropolitan Police Department. The purpose of *[this]* **such** inspection is to insure that the license holder is in compliance with the provisions of this rule. *[This]* **Such an** inspection will determine that *[the license holder—]*:

(A) **The license holder** *[H]* has in his/her possession a proper badge/identification *[(ID)]* card issued by the St. Louis Board of Police Commissioners;

(B) **The license holder** *[I]* is wearing a full uniform when carrying an exposed firearm; and *[/]*

(C) **The license holder** *[H]* has not disregarded or deviated from the manual.

(3) Failure to Cooperate. Failure by any license holder to cooperate with a commissioned member of the St. Louis Police Department, *[in the inspection procedures]* **or with personnel assigned to the private security section in the performance of their official duties**, will constitute grounds for disciplinary action.

(4) Arrest of License Holder. During an inspection, if a license holder has been arrested for a felony, a misdemeanor or an infraction involving moral turpitude or license violation, the holder's badge/*[(ID)]* **identification** card will be seized and forwarded to the private security section of the St. Louis Police Department with a

copy of the arrest report. The license holder is to be informed that s/he is suspended and not to continue to work until the matter is resolved by the private security section. If arrested for a felony violation, a formal suspension number will be obtained in the normal manner. The private security section will conduct any necessary investigation or make notification to the jurisdictional agency.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 17—BOARDS OF POLICE COMMISSIONERS

Division 20—St. Louis Board of Police Commissioners

Chapter 2—Private Security Officers

PROPOSED AMENDMENT

17 CSR 20-2.125 Complaint/Disciplinary Procedures. The board is amending sections (3), (5) and (6), deleting section (8) and renumbering section (9).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(3) Suspension. In instances where a private security officer is arrested for a felony **or a serious misdemeanor**, the commander or watch commander of the district or any officer acting in that capacity will **administratively** suspend the private security officer.

(A) In instances where a private security officer is arrested for a crime or ordinance violation, not a felony, and depending on the situation, the commander or watch commander of the district or any officers acting in that capacity has the choice of **administratively** suspending the private security officer or contacting the commander of the private security section, who will determine whether or not the private security officer is to be suspended. If unable to contact the commander of the private security section, the report of the incident will be forwarded to the private security section at the earliest opportunity.

(B) Whenever a licensed private security officer is **administratively** suspended it will be required that the private security officer surrender his/her badge/**ID/identification** card until a decision is made for its return by the commander of the private security section or a disposition is rendered by the board of police commissioners.

(C) Where no warrant is issued **and/or** no cause for discipline is apparent, *[or both,]* the private security officer's return to duty is to be determined by the commander of the private security section.

(5) Notification/Appeal. Whenever the license of a private security officer is suspended or revoked by the board of police commissioners, the private security section shall notify the licensee in writing of the action. **This notice will be mailed to his/her last address of record.** The licensee shall have ten (10) days from the date of *[posting notice/ mailing notice at his/her last address of record]* to request a review of the disciplinary action. The request shall be directed in writing to the commander of the private security section. The request shall state additional supporting facts in his/her defense, **and/or** rebuttal of the board of police commissioner's decision*[, or both]*.

(A) The commander of the private security section may meet with the licensee and discuss his/her request for review*[,]* **and/or** shall conduct a further investigation of the disciplinary case*[, or both]*.

(B) The commander **of the private security section**, within thirty (30) days of appeal, *[shall render a decision affirming or reversing the original disciplinary action. The commander shall then send his/her decision and report to the board of police commissioners for final action]* **shall submit the appeal in a report to the board of police commissioners for final action.**

(C) Judgments and decisions of the board concerning appeals in disciplinary matters are final **and once the board has ruled, the matter is permanently closed.**

(6) Disciplinary Action*[,]* **and/or** Punishment*[, or both]*.

(B) Licensed security personnel, whether on or off duty, are subject to disciplinary action for violations of these rules. Offenses may include, but not be limited to, the following:

1. Conviction of a felony, misdemeanor or city ordinance;
2. Intoxication or drinking on duty;
3. Possession or illegal use of narcotic or potent drugs (controlled substance);
4. Assumption of police authority when not on duty;
5. Conduct contrary to the public peace and welfare;
6. Interference with any police officer engaged in the performance of his/her duties;
7. Overbearing or oppressive conduct during the performance of duty;
8. Failure to obey a reasonable order by an officer of the St. Louis Metropolitan Police Department;
9. Any conduct or actions which might jeopardize the reputation or integrity of the St. Louis Metropolitan Police Department or its members;
10. Failure to comply with the **firearm** restrictions *[of a firearm]*, while traveling in either direction, without deviation between their residences and places of assignment by the most direct route (not to exceed one (1) hour);
11. Carrying any weapon other than a .38 Special caliber revolver while performing the duties of a private security officer;
12. Failure to have a weapon inspected by the department armorer *[or]* **and/or his/her designee**, not having a record of this weapon on file with the private security section*[, or both]*;
13. Carrying more than one (1) authorized revolver on duty;
14. Failure to wear a valid badge/**ID/identification** card issued by this department on the breast of the outermost garment of security uniform, while on duty;
15. Failure to have in possession a badge/**ID/identification** card *[or]* authorizing uniform exemption *[letter]* while working in civilian attire;
16. Serving or acting as a licensed private security officer for any agency or *[other]* business entity other than the one listed on his/her badge/**ID/identification** card;
17. Failure to conform to uniform requirements;
18. Working as a licensed security person while under suspension;
19. Carrying a firearm concealed or otherwise in civilian attire *[without a uniform exemption letter or]* **and/or** not

actually engaged in providing a *bona fide* security function at the time[, or both];

20. Carrying or using a firearm while performing the duties of a licensed private security officer when not firearms qualified;

21. Any conduct constituting a breach of security or confidence;

22. Neglect of duty;

23. Failure to notify the private security section when and if arrested on any charge;

24. Failure to aid in prosecution;

25. Defacing or altering the badge/[ID/identification card; and]

26. Carrying unauthorized non-lethal weapons and/or protective devices[, or both.];

27. Using unnecessary force in effecting an arrest or discourteous treatment or verbal abuse of any person;

28. Submitting a urine specimen which tests positive for controlled substances;

29. Failure to maintain on file at the private security section a current address and telephone number;

30. Failed to surrender badge/identification card to the private security section when license has been suspended;

31. Failure to cooperate in an investigation conducted by the private security section;

32. Identifying himself/herself as a police officer; and

33. Engaging in a vehicular pursuit.

[(8) When a license is ordered revoked by the board of police commissioners, the badge/ID deposit fee will be forfeited to the board. Licensed private security officers who are under investigation by this department for any alleged violations of any rules will be allowed the discretionary resignation of their commission and in these instances will have the badge/ID deposit fee refunded, provided all department-issued equipment is surrendered in the private security section.]

[(9)](8) Individuals who resign while under investigation will not be considered for a license in the future.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention: Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 2—Private Security Officers**

PROPOSED AMENDMENT

17 CSR 20-2.135 Drug Testing. The board is amending sections (1) and (2).

PURPOSE: This rule is being amended in order to update and more clearly reflect the rules and policies of the board of police commissioners relating to licensed security officers.

(1) Applicability. The following shall apply to all individuals seeking certification in any **security** category *[of armed]*, **including corporate security advisor**, security officer, **courier**, as well as to all individuals seeking renewal or reinstatement of certification:

(A) Any individual seeking certification as an armed security officer or any individual seeking reinstatement of certification, shall submit to urinalysis testing before certification is granted, renewed or reinstated. This testing shall be for the purpose of determining the presence or absence of illegal drugs. Refusal to comply with this requirement shall result in the denial of certification, renewal of certification *[of]* or reinstatement of certification as an armed security officer, **corporate security advisor or courier**;

(B) If the results of an individual's urinalysis test are positive, that is, indicative of the presence of illegal drugs in the sample, the following penalties shall apply:

1. If the individual is an applicant for initial *[certification]* **licensing**, s/he shall be denied *[certification]* **a license** and shall not be permitted to reapply for a period of one (1) year;

2. If the individual is an applicant for renewal of *[certification]* **a license**, his/her *[certification]* **license** shall be suspended and *[shall not be renewed for a period of one (1) year; and]* **an investigation conducted. The results of the investigation will be forwarded to the board of police commissioners. The board may revoke a license for one (1) year based on a positive drug screen;**

3. If the individual is an applicant for reinstatement of *[certification]* **license**, reinstatement shall be denied for a period of one (1) year; **and**

4. **A second positive drug test will permanently exclude the applicant from holding a security license;**

(D) The confirmatory testing method to be used shall be Gas Chromatography Mass Spectroscopy (GCMS). No applicant shall be denied *[certification]* **a license**, renewal of *[certification]* **a license** or reinstatement of *[certification]* **a license** on the basis of a positive result on the EMIT test, unless that result is first confirmed by GCMS;

(F) The expense of the drug test shall be borne by the individual requesting **an armed [certification] license** or renewal as an armed security officer. All expenses associated with urinalysis testing shall be borne by the individual seeking *[certification]* **the license**, or reinstatement of *[certification]* **a license** as an armed security officer;

(G) A portion of each sample taken pursuant to this rule shall be preserved and, upon request, be made available to the applicant from whom it was taken for the purpose of contesting the results of the analysis performed pursuant to subsections (1)(C)–(E) of this rule. The expense/s of any analysis *[made by an applicant]* for the purpose of contesting the results shall be borne entirely by the applicant. **Procedures for contesting the results of a drug analysis shall be determined by the private security section and made available on request; and**

(H) Any request made by an applicant for the preserved portion of a sample must be made within thirty (30) days of the applicant's receipt of notification of denial of *[certification]* **a license**, renewal or reinstatement because of failure to pass urinalysis testing.

(2) Laboratory and Testing Procedures. *[The]* **Security officers and couriers [may employ] will use the laboratory under contract with the Board of Police Commissioners for collections and analyses of specimens. The testing laboratory will comply with all the provisions of this regulation including the following: [of his/her choice for analysis of specimens; provided,**

that the laboratory is reputable and is operating within the statutes, laws, ordinances or guidelines established by Missouri and any county or municipality of this state to govern or control those facilities; and further that the laboratory complies with all of the provisions of this regulation as follows:

(C) The collection process must include procedures to adequately insure:

1. That the specimen is correctly identified as coming from the donor/examinee;
2. That the specimen cannot be altered or tampered with after it has been collected;
3. That there is a documented chain of custody with respect to the sample;
4. That laboratory results are accurately identified with the particular specimen on which the analysis has been performed;
5. That procedures are instituted to rule out a positive analysis based upon the presence of over-the-counter or prescription drugs in the urine of the examinee;
6. That procedures are instituted to rule out positive analysis based upon the presence of contraband drugs in the urine which presence could have been derived in a manner other than by direct ingestion or intravenous injection; and
7. That procedures are instituted to insure the confidentiality of laboratory results and that positive results are made known only to those individuals, institutions, corporations, governmental agencies or other entities or their agents who have been granted the privilege of disclosure under the terms and conditions of *[this agreement]* these rules only for the purpose of carrying out the sole intent of this regulation;

(E) Laboratory results must be delivered via the *[United States mail, postage prepaid, to the]* collection agency's computer and the printer housed at the (United States mail, postage prepaid, to) Metropolitan Police Department, Private Security Section.

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 16, 1990, effective June 28, 1990. Amended: Filed June 30, 1992, effective Feb. 26, 1993. Amended: Filed June 28, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Police Commissioners of the City of St. Louis, Attention Sgt. Michael Frederick, Private Security Section, Tower G, Room 330, 7600 Oakland Avenue, St. Louis, MO 63110. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title [13/19—DEPARTMENT OF [SOCIAL SERVICES] HEALTH AND SENIOR SERVICES
Division 15—Division of [Aging] Senior Services
Chapter 7—In-Home Service Standards**

PROPOSED AMENDMENT

[13/19 CSR 15-7.021 In-Home Service Standards. The director of the Division of Senior Services is amending sections (1)–(4), (6)–(8), (12), (14)–(19) and (21)–(24); and adding new sections (5) and (20). The division is also deleting the following forms,

which appear at the end of the rule in the *Code of State Regulations*: LTACS Client Report, form number MO 866-1165; Provider Communication, form number MO 866-1157 and Supervisory Monitoring/Delivery Log, form number MO 866-2232.

PURPOSE: This amendment revises the criteria for in-home service providers who contract with the division, including language as required by new legislation.

(1) The Department of *[Social]* **Health and Senior Services (also referred to as the department)**, Division of *[Aging's]* **Senior Services' (also referred to as the division)** payment to the provider is made on behalf of an eligible client as an act of indirect or third-party reimbursement and is not made as a payment for the purchase of a service. *[However, o]*Only those services authorized by the *[D]*division *[of Aging]* shall be reimbursable to the provider.

(2) The in-home service provider shall deliver services in compliance with the standards set forth in this rule and **13 CSR 70-91.010 Personal Care Program, 13 CSR 70-3.020 Title XIX Provider Enrollment, and 13 CSR 70-3.030 Sanctions for False and Fraudulent Claims for Title XIX Services.**

(3) Failure of the **in-home service** provider to comply with the terms of the contract and these standards may constitute a breach of contract.

(4) In accordance with the protective service mandate (Chapter 660, RSMo), the *[D]*division *[of Aging]* may take immediate action to protect clients from providers who are found to be out of compliance with the requirements of this rule and of any other rule applicable to the in-home services program, when such noncompliance is determined by the *[D]*division *[of Aging]* to create a risk of injury or harm to clients.

(A) Evidence of such risk may include:

1. *[u]*Unreliable, *[or]* inadequate, **falsified, or fraudulent** *[provider]* documentation of service/s/ **delivery** or training *[due to falsification or fraud]*;

2. *[the provider's f]*Failure to deliver services in a reliable and dependable manner; *[or]*

3. *[u]*Use of in-home service workers who do not meet the minimum **employment requirements** or training standards of this rule~~./~~;

4. **Failure to comply with the requirements for background screening of employees (sections 660.315, RSMo and 660.317, RSMo); or**

5. **Discontinuing services outside the provisions specified in section (16) of this rule without the knowledge and consent of the client for a period of one (1) week or three (3) consecutive scheduled service delivery dates, whichever is shorter.**

(B) Immediate action may include, but is not limited to:

[[A)] 1. Removing the provider from any list of providers, and for clients who request the unsafe and non/*complainant/compliant* provider, informing the clients of the determination of noncompliance after which any informed choice will be honored by the *[D]*division *[of Aging]*; or

[[B)] 2. Informing current clients served by the provider of the provider's noncompliance and that the division has determined the provider unable to deliver safe care. Such clients will be allowed to choose a different provider from the list maintained by the *[D]*division *[of Aging]* which will then be immediately authorized to provide service to them.

(5) **The division will not consider any proposal for an in-home services contract and subsequent enrollment as a Medicaid personal care provider under 13 CSR 70-91.010(3) unless the proposal is fully completed, properly attested to or affirmed by**

a person with the expressed authority to sign the proposal, and contains all required attachments.

(A) The proposal shall be made in the exact legal name of the applicant for a contract. The attachments to the proposal shall include, but are not limited to the following information/copies:

1. Federal tax identification number;
2. Most recent corporate annual registration report filed with the Missouri secretary of state (if applicable);
3. Certificate of Good Standing issued by the Missouri secretary of state (if applicable);
4. Fictitious name registration filed with the Missouri secretary of state (if applicable);
5. Corporation by-laws, if the applicant is a corporation;
6. Operating agreement and management agreement, if applicable, if the provider is a limited liability company; and
7. Certificate of Insurance evidencing the coverage described in subsection (18)(F) of this rule, naming the division as a certificate holder.

(B) Upon receipt of a proposal, the division will conduct whatever investigation which, in the division's discretion, is necessary to determine the applicant's eligibility for a contract. The decision determining eligibility for a contract may include, but is not limited to, the conduct of the provider and principals of the provider during any prior contractual periods.

(C) Prior to the issuance of an initial contract, a site visit will be conducted for in-home service providers entering the program after July 1, 2001.

[[5]] (6) Respite care services are maintenance and supervisory services provided to a client in the individual's residence to provide temporary relief to the [usual] caregiver(s) that normally provides the care.

(A) Respite care services shall include, at a minimum, the following activities:

[[A]] 1. Supervision—The respite care worker will provide personal oversight of the client for the duration of the service period. Personal oversight includes making a reasonable effort to assure the safety of the client and to assist the client in meeting his/her own essential human needs. Sleeping is permitted when the client is asleep, provided there is no indication that the condition of the client would pose a risk if the client awoke while the respite care worker was sleeping. The worker must be in close proximity to the client during a sleeping period;

[[B]] 2. Companionship—The worker will provide companionship during the client's waking hours and attempt to make the client as comfortable as possible; and

[[C]] 3. Direct [C/client [A]assistance—The worker will provide direct client assistance as needed to meet needs usually provided by the regular caregiver.

(B) Basic respite care services are provided to clients with non-skilled needs.

[[6]] (C) Advanced respite care services are maintenance and supervisory services provided to a client with [special] non-skilled needs [in] that require specialized training [individual's residence for the purpose of temporary relief to a caregiver who lives with the client].

1. Clients appropriate for this service include persons with special needs, requiring a higher level of personal oversight [approved] as determined by the [D]division [of Aging]. [The advanced respite care services are similar to those specified in subsections (5)(A), (B) and (C); however, the client's requirements for personal oversight are higher.]

[[A]] 2. An initial on-site evaluation of the client's condition and identification of special training needs for the advanced respite care worker shall be made by the provider RN prior to initiation of service.

[[B]] 3. A monthly nurse visit will be authorized for each advanced respite care client for each month advanced respite care is authorized. [This] During the visit the nurse will evaluate and document the client's condition and adequacy of the [authorized services to meet the needs and condition of the client.] care plan.

[[C]] 4. Although monthly visits may be performed by a licensed nurse, [F]for clients receiving ongoing advanced respite care services, it is required that the on-site visit/s/ be conducted by an RN [be conducted] at six (6) month intervals. [During these visits, the RN shall conduct an evaluation of the client's condition and the adequacy of the care plan.]

(D) Nurse respite care services are maintenance and supervisory services provided to a client with special skilled needs. Nurse respite care services are provided to relieve a caregiver who lives with the client.

1. Clients appropriate for this service include persons with special needs as determined by the division.

2. An initial on-site evaluation of the client's condition and identification of special training needs for the nurse respite care worker shall be made by the provider RN prior to initiation of service.

3. For clients receiving ongoing nurse respite care services, it is required that an on-site evaluation be conducted by an RN at six (6) month intervals. The RN evaluation shall document the client's condition and the adequacy of the care plan.

(7) Homemaker services are general household activities provided by a trained homemaker when the client is unable to manage the home and care for him/herself or others in the home or when the individual (other than the client) who is regularly responsible for these activities is temporarily absent. Homemaker services shall include, at a minimum, the following activities:

(J) Wash inside windows and clean [venetian] blinds that are within reach without climbing;

(M) Perform essential errands (for example, [obtain food stamps,] pick up medication, post mail, etc.);

(8) Optional homemaker services are household tasks necessary to maintain a safe and habitable home environment provided intermittently as needed by a trained homemaker. Optional homemaker services include the following activities:

(H) Wash inside windows, clean blinds, or both, which require climbing; [and]

(I) Bag outside trash./; and

(J) Outside maintenance including lawn mowing, raking or snow removal.

(12) Authorized nurse visits are skilled nursing services of a maintenance or preventive nature provided to clients with stable chronic conditions. They are provided at the client's residence and prior-authorized by the [D]division [of Aging] case manager. These services are not intended primarily as treatment for an acute health condition. Authorized nurse visit services may be provided by a licensed practical nurse (LPN) under the direction of a registered nurse (RN). Regulations for authorized nurse visits are filed at 13 CSR 70-91.010.

(14) Prior to approval by the division for an [Division of Aging funded] in-home services contract and subsequent enrollment as a Medicaid personal care provider under 13 CSR 70-91.010(3), in addition to the contract, after August 1, 1998, all providers must—

(B) Ensure that the designated manager successfully completes (or has completed) a [D]division [of Aging] provider certification course offered (quarterly or as needed) [in a central location] at no charge. Attendees shall be responsible for their own expenses, including but not limited to travel, meal and lodging costs they may incur in attending this course;

(D) *[Once approved, providers are required to cooperate with the division to require] Ensure the designated managers [to attend the certification course if the division requires attendance to improve operations of providers found to be substantially noncompliant.] successfully complete the division's certification course annually.*

(15) Clients shall be accepted for care on the basis of a reasonable expectation that the client's maintenance care needs can be met adequately by the agency in the client's place of residence. Services shall follow a written state-approved *[service] care plan* developed in collaboration with and signed by the client.

(A) The *[service] care plan* shall consist of an identification of the services and tasks to be provided, frequency of services, the maximum number of units of service per month, functional limitations of the client, nutritional requirements if a special diet is necessary, medications and treatments as appropriate, any safety measures necessary to protect against injury and any other appropriate items.

(B) A new in-home assessment and *[service] care plan* may be completed by the *[D]division [of Aging]* as needed to redetermine the need for in-home services or to adjust the monthly amount of authorized units. In collaboration with the client, the provider agency may develop a new or revised set of service tasks, and weekly schedule for service delivery which shall be forwarded to the *[D]division [of Aging]*. The service provider must always have, and provide services in accordance with, a current *[service] care plan*. Only the *[D]division [of Aging]*, not the service provider, may increase the maximum number of units for which the individual is eligible per month.

(16) **To ensure safety and welfare of clients, [T]he following policies and procedures [for] shall be followed when discontinuing in-home services [shall be followed]:**

(A) Services for a client shall be discontinued by a provider *[agency under the following circumstances:]*

[1. When] upon receipt of information that the client's case is closed by the [D]division [of Aging];

[2.] (B) When the provider learns of circumstances that may require [the closure of a] closing the case: [for reasons including, but not limited to,] (for example, death, entry into a nursing home, client no longer needs service[.], etc.), [In these circumstances,] the provider shall notify the [D]division [of Aging] case manager in writing and request that the client's services be discontinued;

(C) When the client, family member, or other person living in the household, threatens or abuses provider personnel, the provider shall immediately notify the provider case manager by telephone and in writing including information regarding the threat(s) or abusive acts; or

[3. When the client is noncompliant with the agreed upon plan of care. Noncompliance requires persistent actions by the client or family which negate the services provided by the agency. After all alternatives have been explored and exhausted, the provider shall notify the Division of Aging case manager in writing of the noncompliant acts and request that the client's services be discontinued;]

[4. When the client or client's family threatens or abuses the in-home service worker or other agency staff to the point where the staff's welfare is in jeopardy and corrective action has failed. The provider shall notify the Division of Aging case manager of the threatening or abusive acts and may request that the service authorization be discontinued;]

[5. When a provider is unable to continue to meet the maintenance needs of a client. In these circumstances, the provider shall notify the Division of Aging case manager in

writing and request that the client's services be discontinued; or]

[6.] (D) When a client is noncompliant with the agreed upon care plan or the provider is unable to continue to meet the [maintenance] needs of a client still in need of assistance, [whose plan of care requires advanced personal care or advanced respite services. In these circumstances,] the provider shall [provide] contact the division case manager and client (including the caregiver or family when appropriate). The provider shall give written notice of discharge to the client or client's family and the [D]division [of Aging] case manager at least twenty-one (21) days prior to the date of discharge. During this twenty-one (21)-day period, the [D]division [of Aging] case manager shall make appropriate arrangements with the client for transfer to another agency, [institutional placement or other appropriate] or arrange for care in another care setting. [Regardless of circumstances, t]The provider must continue to provide care in accordance with the [plan of] care plan for these twenty-one (21) days or until alternate arrangements can be made by the case manager, whichever comes first.

[(B) Discontinuing services for a client still in need of assistance shall occur only after appropriate conferences with the Division of Aging case manager, client and client's family.]

(17) A unit of in-home service is one (1) hour *[(sixty (60) minutes)]* of direct service provided to the client in the client's home by a trained in-home service worker, including time spent on completing documentation of service units provided and obtaining the client's signature. No units are reimbursed except as authorized by the *[D]division [of Aging]*.

(B) [Partial units are reimbursable as follows:]

[1.] For monthly invoicing purposes, [units and] partial units of a particular service provided in the course of the month [shall be added together and billed in whole units with no rounding up to the next whole unit when totaling units for each client] may be accumulated over the billing cycle;

[2.] [P]artial units [may] shall not be accumulated [over the billing cycle, but are not reimbursable in a subsequent month or billing cycle; and] or carried over to the next month's billing cycle.

[3. Partial units may not be carried over to the next month.]

(D) Nurse respite care is authorized as a four (4) hour block of service, per unit.

[(D)] (E) The monthly invoice submitted to the [D]division [of Aging] for in-home service shall not exceed actual delivered units of services.

(18) The in-home service provider shall meet, at a minimum, the following administrative requirements:

(B) Successfully contact at least two (2) **credible** references for each employee within thirty (30) calendar days of the date of employment. **The term "credible [R]references" shall [be] mean** former employers or other knowledgeable persons, excluding relatives of the employee. The documentation shall include the name of the employer and the individual giving the reference, the date, the response given when the reference was obtained by telephone and the signature of the person receiving the reference;

(C) Monitor a current copy of the *[D]department's [of Social Services'] Employee Disqualification List* to ensure that no current or prospective employee's name, *who is in direct contact with clients,* appears on the list and *[take the appropriate action] discharge any such employee* once it is discovered by the provider that the employee is on the Employee Disqualification List;

(D) Have the capability to provide service outside of regular business hours, on weekends and on holidays as authorized by the *[D]division [of Aging]*;

(E) Protect the *[D]department [of Social Services]* and its employees, agents or representatives from any and all liability, loss, damage, cost and expense which may accrue or be sustained by the *[D]department [of Social Services]*, its officers, agents or employees as a result of claims, demands, costs, suits or judgments against it arising from the loss, injury, destruction or damage, either to person or property, sustained in connection with the performance of the in-home service;

(F) *[Maintain bonding coverage and personal and property liability insurance coverage on all employees who are connected with the delivery and performance of in-home services in the client's home;]* **Maintain a commercial general liability insurance policy in full force and effect that covers all places of business and any and all clients, customers, employees and volunteers. Such policy shall be an occurrence policy and shall provide coverage for no less than one (1) million dollars per event and three (3) million dollars aggregate and shall include coverage for negligent acts and omissions of the provider's employees and volunteers in the provision of services to clients in such clients' homes. Such policy shall name the division as a certificate holder. Providers shall also maintain a professional liability insurance policy in full force and effect that covers all places of business and any and all clients, customers, employees and volunteers. Such policy shall provide coverage for no less than one (1) million dollars per event and three (3) million dollars aggregate and shall include coverage for negligent acts and omissions of the provider's employees and/or volunteers in the provision of professional services to clients in such clients' homes. Such policy shall name the division as a certificate holder. The policies shall be coordinated to ensure coverage for all negligent acts and omissions in the provision of the in-home services described in this rule and in 13 CSR 70-91.010, by the provider's employees and volunteers. Additionally, providers shall maintain an employee dishonesty bond covering employees and volunteers who are connected with the delivery and performance of in-home services in the client's home;**

(G) Furnish adequate identification (ID) to employees of the provider. This ID shall be carried by the employee *[and presented to the client upon request]* in a way that the client can see the name of the agency with whom the aide is employed. A permanent ID including the provider's name, employee's name and title shall be considered adequate ID. At the time of employment, an ID shall be issued which will meet the ID requirement. The provider shall require the return of the ID from each employee upon termination of employment;

(I) Notify the *[D]division's [of Aging]* central office and regional manager of any changes in location, telephone number, administrative or corporate status;

(J) Have and enforce a written code of ethics which is distributed to all employees and clients. The code of ethics shall allow use of the bathroom facilities, and, with the client's consent, eat lunch~~/,~~ provided by the worker, in the client's home. The code of ethics shall be reviewed with the client, caregiver or family when appropriate, and include, at a minimum, the following prohibitions:

1. Use of client's car;
2. Consumption of client's food or drink (except water);
3. Use of client's telephone for personal calls;
4. Discussion of own or other's personal problems, religious or political beliefs with the client;
5. Acceptance of gifts or tips;
6. Bringing other persons to the client's home;

7. Consumption of alcoholic beverages, or use of medicine or drugs for any purpose, other than medical, in the client's home or prior to service delivery;

8. Smoking in client's home;

9. Solicitation or acceptance of money or goods for personal gain from the client;

10. Breach of the client's privacy and confidentiality of information and records;

11. Purchase of any item from the client even at fair market value;

12. Assuming control of the financial or personal affairs, or both, of the client or of his/her estate including power of attorney, conservatorship or guardianship;

13. Taking anything from the client's home; and

14. Committing any act of abuse, neglect or exploitation;

(K) **Ensure prompt initiation of authorized services to new clients. The provider shall *[D]*deliver the in-home service within seven (7) calendar days of receipt of the service authorization from the *[D]division [of Aging]* case manager or on the beginning date specified by the authorization, whichever is later, and on a regular basis after that in accordance with the *[service]* care plan. The date of receipt must be recorded on each service authorization by the provider. Verbal authorizations shall be effective upon acceptance by the provider and services must begin as agreed. If service is not initiated within the required time period, detailed written justification must be sent to the *[D]division [of Aging]* case manager with a copy maintained in the client's file;**

(L) Recommend, verbally or in writing, *[if]* changes to the authorized care plan any time the client has an ongoing need for service activities which may require more or fewer units than the amount specified in the *[service]* care plan *[, that the plan of care be revised. Either the in-home services worker or the supervisor shall make this recommendation]*;

(M) Keep documentation of undelivered services, including the *[by client. The]* reason for this failure to deliver authorized units *[shall be recorded in this documentation]*;

(N) Be aware that in-home services provided shall not be reimbursed unless authorized in writing by the *[D]division [of Aging]*;

(O) Ensure that all subcontractors comply with all standards required by section (2) of this rule;

(P) Shall give a written statement of the client's rights *[to]* and review the statement with each client and primary caregiver, when appropriate~~/,~~ at the time service is initiated. *[, which includes.]* **The statement of client rights must contain** at a minimum, the right to:

1. Be treated with respect and dignity;
2. Have all personal and medical information kept confidential;
3. Have direction over the services provided, to the degree possible, within the care plan *[of care]* authorized;
4. Know the provider's established grievance procedure and how to make a complaint about the service and receive cooperation to reach a resolution, without fear of retribution;
5. Receive service without regard to race, creed, color, age, sex or national origin; and
6. Receive a copy of the provider's code of ethics under which services are provided;

(Q) Have a system through which clients may present grievances concerning the operation of the in-home service program **and/or delivery of care;**

(R) Report all instances of potential abuse, neglect, exploitation of a client, or any combination of these, to the *[D]division's [of Aging]* Elder~~/y]~~ Abuse *[and Neglect]* Hotline (1-800-392-0210), including all instances which may involve an employee of the provider agency;

(S) Copayment, as determined by the *[D]division's [of Aging]* case manager, shall be collected monthly from non-Medicaid clients. Liability levels for copayment are based on a sliding fee

schedule *[on the Client Assessment form or other documentation]* as determined by the *[D]*division *[of Aging]*. The money collected as copayment replaces the amount withheld from reimbursement by the automated payment system. Prompt and reasonable attempts to collect from the client, the client's guardian or estate shall be made by the provider. Failure *[to collect]* of clients to submit the required copayment, when determined to be a condition of participation, shall be reported to the *[D]*division *[of Aging]*. Failure of clients to comply with copayment requirements may result in termination of services. Unsuccessful attempts to collect from the estate of a deceased client are to be referred to the home and community *[based]* services deputy director of the *[D]*division *[of Aging]*;

(T) Implement a contribution system which accounts for contributions received from clients for in-home services. **Non-Medicaid** *[C]*clients shall be informed of their right to voluntarily contribute *[no more than quarterly and no less than every six (6) months.]* when they are admitted for services. Services shall not be denied to any client based on failure to make a contribution. *[Monthly reporting]* Reports of contributions by county shall be made to each home and community services regional manager *[of contributions]* including the balance on hand, *[at the beginning of the month,]* contributions received, contributions used for *[D]*division *[of Aging]* authorized services, and *[month]* ending balance. **The provider shall submit to the regional manager, a contribution report at the end of any month in which contributions are received and/or expended;**

(U) Understand that both program and fiscal monitoring of the in-home service program shall be conducted by the *[D]*division *[of Aging]* or its designee.

1. Monitoring visits may be announced or unannounced~~;~~.

2. **The division shall disclose the findings of the visit to the provider.**

3. **Upon request by the division, the provider shall submit a written plan for correcting areas found to be out of compliance;**

(V) *[Shall not solicit, nor cause to be solicited, through agents or employees of the in-home service provider, any person to become a client if that person is currently receiving services from any provider authorized by the Division of Aging. Solicitation means seeking out or initiating contact with another provider agency's clients, in person or by mail, for the purpose of persuading them to choose another provider. Solicitation, as used in this subsection, does not include media advertising directed toward the general public; nor does it include presentations to the general public, organizations or other interested groups regarding the services available; and]* **Designate trainer(s) to perform the sessions required as part of the basic training. The designated trainer(s) may be the RN, LPN, supervisor, or an experienced aide who has been employed by the provider agency at least six (6) months. A list of designated trainers must be available for monitoring; and**

(W) Providers must establish, enforce and implement a policy whereby all contents of the personnel files of its employees are made available to *[D]*department *[of Social Services]* employees or representatives when requested as part of an official investigation of abuse, neglect, financial exploitation, misappropriation of client's funds or property, or falsification of documentation which verifies service delivery.

(19) In-home service providers shall meet, at a minimum, the following personnel requirements:

(A) **The in-home provider shall employ an RN or designate an RN as a consultant, who meets each of the following qualifications:**

1. **Currently licensed in Missouri;**

2. **Have at least one (1)-year verifiable experience with direct care of the elderly, disabled, or infirm;**

3. **Meet the RN supervisory requirements for personal care and advanced personal care in accordance with 13 CSR 70-91.010;**

[(A)](B) A supervisor shall be designated by the provider to supervise the day-to-day delivery of in-home service *[Each supervisor shall meet the]* who shall be at least twenty-one (21) years of age and meet at least one (1) of the following requirements:

[1. Be at least twenty-one (21) years of age; and]

[2.] 1. Be a registered nurse who is currently licensed in Missouri; or

2. Possess a baccalaureate *[have at least a bachelor of science or bachelor of arts]* degree; *[or be a licensed practical nurse who is currently licensed in Missouri]* with at least one (1) year of paid experience *[with the]* providing direct care *[of]* to the elderly, disabled and/or infirm; or

3. **Be a licensed practical nurse who is currently licensed in Missouri with at least one (1) year of paid work experience providing direct care to the elderly, disabled and/or infirm; or**

4. *[or h]*Have at least three (3) years of paid work experience *[with the]* providing direct care *[of]* to the elderly, disabled and/or infirm;

[(B)] (C) All in-home service workers employed by the provider shall meet the following requirements:

1. Be at least eighteen (18) years of age;

2. Be able to read, write and follow directions; and **meet at least one (1) of the following requirements:**

[3.] A. Have at least six (6) months paid work experience as *[any]* an agency homemaker, nurse aide, maid or household worker; or

B. *[a]*At least one (1) year~~'~~s experience, paid or unpaid, in caring for children or for sick or aged individuals~~.~~; or

C. Successful completion of formal training in nursing arts or as a nurse aide or home health aide *[can substitute for the qualifying experience];*

[(C)] (D) All advanced personal care aides and advanced respite care workers employed by the provider shall be—

1. A licensed practical nurse; or

2. Certified nurse assistant; or

3. A *[competency evaluated]* home health aide *[as required by the Missouri Department of Health]* meeting the standards for training, testing and competency evaluation described in 42 CFR 484.36; or

4. Documented to have worked successfully for the provider for a minimum of three (3) consecutive months while working at least fifteen (15) hours per week as an in-home aide that has received personal care training;

[(D)] (E) All individuals employed to deliver authorized nurse visits *[are]* shall be currently licensed to practice as a registered nurse or a licensed practical nurse in Missouri; *[and]*

[(E)] In-home service providers must evaluate health conditions of all in-home employees who have direct client contact—]

[1. Establish, implement, and enforce a policy governing communicable diseases that prohibits provider staff contact with clients when the employee has a communicable condition, including colds or flu; and]

[2. Assure that reporting requirements governing communicable diseases, including hepatitis and tuberculosis, as set by the Missouri Department of Health are carried out.]

(F) The division does not require employees delivering only optional chore services outside the client's home as specified in (8)(J) to have experience as required in (19)(C)2. of this rule; and

(G) The provider shall inform employees, of applicable requirements for registration with the Family Care Safety Registry (FCSR) pursuant to the requirements of sections 210.900, RSMo to 210.936, RSMo.

(20) The RN required by (19)(A) of this rule will be primarily responsible for proper care of clients, training of staff, and general clinical integrity of the in-home service provider. Such responsibilities shall include, at a minimum, the following functions:

(A) Monitor or provide oversight to staff that supervise in-home workers in the direct provision of services to assure that services are being delivered in accordance with the care plan;

(B) Direct or oversee staff responsible for in-home worker orientation and in-service training required herein; assure all training requirements are met; and ensure that in-home workers are trained to competently perform all basic and advanced service tasks as specified in this rule;

(C) Provide oversight to the process and documents used by the staff who conduct annual supervisor visits and have in place a system that ensures that a nurse reviews the completed evaluations;

(D) Assure that appropriate recommendations or reports are forwarded to the division including: requests to increase, reduce or discontinue services, changes in the client's condition, noncompliance with care plan, nondelivery of authorized services, or the need for increased division involvement;

(E) Establish, implement and enforce a policy governing communicable diseases that prohibits provider staff contact with clients when the employee has a communicable condition including colds or flu;

(F) Assure compliance with reporting requirements governing communicable diseases, including hepatitis and tuberculosis, as set by the Missouri Department of Health and Senior Services (19 CSR 20-20.020); and

(G) Review and initial all documentation of nurse tasks or functions delegated to and performed by an LPN.

[(20)] (21) The in-home service [administrative] supervisor's responsibilities shall include, at a minimum, the following functions:

(A) Monitoring the provision of services by the in-home services worker to assure that services are being delivered in accordance with the [service] care plan. This shall be primarily in the form of an at least monthly review and comparison of the worker's record of provided services with the [service] care plan.

(B) Documentation must be kept on clients with a delivery rate of less than eighty percent (80%) of the authorized units of in-home service. For each client with a delivery rate less than eighty percent (80%) of the authorized units of in-home services authorized for the time period being reviewed, the number of units of service delivered and the non-delivery code will be sent to the [D]division [of Aging] regional manager monthly on a form acceptable to the regional manager. Discrepancies for these clients concerning the frequency of delivered services and/or the in-home service tasks delivered, the corrective action taken, will be signed and dated by the supervisor and be readily available for monitoring or inspection;

[(B)] Designating a trainer(s) to perform the sessions required as part of the basic training. The designated trainer(s) may be the supervisor or an experienced aide who has been employed by the provider agency at least six (6) months. A list of designated trainers must be available for monitoring;]

(C) Evaluating, in writing, each in-home service aide's performance at least annually. The evaluation shall be based in part on at least one (1) on-site visit. The aide must be present during the visit. The evaluation will include, in addition to the aide's perfor-

mance, the adequacy of the [service] care plan, including review of the [service] care plan with the client. The written report of the evaluation shall contain documentation of the visit, including the client's name, the date and time of the visit, the aide's name and the supervisor's observations and notes from the visit. The evaluation shall be signed and dated by the supervisor who prepared it and by the aide. If the required evaluation is not performed or not documented, the aide's qualifications to provide the services may be presumed inadequate and all payments made for services by that aide may be recouped; [and]

(D) Communicating with the [D]division [of Aging] case manager and provider RN regarding changes in any client's condition, changes in scope or frequency of service delivery and recommending changes in the number of units of service per month including written documentation of that communication[.]; and

(E) Assure that all employees (whether employed by contract, by the hour, or per visit) have a signed agreement detailing the employment arrangement, including all rights and responsibilities.

[(21)] Registered nurse supervisory requirements for personal care and advanced personal care shall follow 13 CSR 70-91.010.]

(22) The in-home service provider shall have a written plan for providing training for new aides, respite care workers and homemakers which shall include, at a minimum, the following requirements:

(A) Twenty (20) hours of orientation training for in-home service workers, including at least two (2) hours orientation to the provider agency and the agency's protocols for handling emergencies, within thirty (30) days of employment.

1. Eight (8) hours of classroom training will be provided prior to the first day of client contact.

2. New employee orientation curricula shall include an overview of Alzheimer's disease and related dementias and methods of communicating with persons with dementia pursuant to the requirements of 660.050(22)8, RSMo.

[2.] 3. Twelve (12) hours of required orientation training may be waived for aides and homemakers with adequate documentation in the employee's records that s/he has received similar training during the current or preceding [fiscal] year or has been employed at least half-time for six (6) months or more within the current or preceding [fiscal] year.

[3.] 4. [May waive a] All orientation training[,] (except the required [minimum of] two (2) hours['] provider agency orientation [to the provider agency,] may be waived with documentation, placed in the aide's personnel record, that the aide is a licensed practical nurse, registered nurse or certified nurse assistant. The documentation shall include the employee's license or certification number which must be current and in good standing at the time the training was waived;

(B) Ten (10) hours of in-service training annually are required after the first twelve (12) months of employment. Annual in-service training curricula shall include updates on Alzheimer's disease and related dementia; and

(C) Additional training requirements for in-home workers providing advanced respite [workers is] must be determined and provided by [the] a provider agency RN following assessment of the client's condition and needs.

(23) The in-home service provider shall have written documentation of all basic and in-service training provided which includes, at a minimum:[,]

(A) [a]A report of each employee's training in that employee's personnel record. The report shall document the dates of all classroom or on-the-job training, trainer's name, topics, number of

hours and location, the date of the first client contact and shall include the aide's signature.

(B) If a provider waives the in-service training, the employee's training record shall contain **documentation sufficient to support [supportive data for] the waiver. In-service training shall not be waived, unless the employee's record contains documentation that the employee has received Alzheimer's disease and related dementias training.**

(C) The provider agency shall keep a training record or folder that contains:

1. A list of all training sessions held by the provider to fulfill training requirements;
2. A copy of all agendas showing date, time and duration of training sessions; and
3. Qualifications of trainer(s), if other than the provider agency RN.

(24) The in-home service provider shall maintain, at a minimum, the following records in a central location for five (5) years. **Records must be [and] provided [them] to the [D]department [of Social Services] staff or designees upon request, and must be maintained in a manner that will ensure they are readily available for monitoring or inspection. Records include:**

(A) Individual client case or clinical records including records of service provision. These are confidential and shall be protected from damage, theft and unauthorized inspection and shall include, at a minimum, the following:

1. The authorization for services forms *[(LTACS Client Report)]* from the *[D]division [of Aging]* which documents authorization for all units of service provided;

2. Individual worker's/ delivery records that *[(lists)] accurately document* the client's name, dates of service delivery, *beginning time and ending time for each service delivery date [spent on each day]*, activities or tasks performed, aide's signature and the client's signature verifying each date(s) of service. If the client is unable to sign, another responsible person present in the home during service delivery may sign to verify the time and activities reported or the client may make his/her mark (x) which shall be witnessed by a minimum of one (1) person who may be the aide or homemaker. If these documents are not *[(maintained)] filed* in the client's case record, they must be readily available for monitoring or inspection;

3. *[(Copies of the supervisory monitoring log)] Documentation* explaining discrepancies between authorized and delivered services including a description of corrective action taken, **when applicable, and documentation of information forwarded to the division [must be maintained in a central location and available for monitoring or inspection by the Department of Social Services];**

4. *[(Any)] All* registered nurse clinical notes concerning the client;

5. Documentation of all correspondence and contacts with the client's physician or other care providers;

6. Copies of written communication transmitted to and from the *[D]division [of Aging]* case manager; and

7. Any other pertinent documentation regarding the client[.];

(B) Individual personnel record for each employee which is a confidential record and shall be protected from damage, theft and unauthorized inspection and shall include, at a minimum, the following:

1. Employment application *[(with)] containing* the employee's signature and documentation sufficient to verify the employee meets age *[(showing requirements met for age)]*, education, and work experience requirements. *[(and t/The record shall document employment and termination dates [employed and terminated by the service provider];*

2. Documentation of at least two (2) **credible** reference/s *[(successfully contacted)] contacts;*

3. Documentation concerning all training and certification received;

4. Documentation *[(for)] supporting* any waiver of employment or training requirements;

5. Annual performance evaluation which includes observations from one (1) on-site visit;

6. A signed statement *[(verifying)] documenting* that the employee received and reviewed a copy of the client's rights, the code of ethics and *[(that)] the service provider's policy regarding confidentiality of client information [was/ and that all were explained prior to service delivery;*

7. A signed statement verifying that the supervisor received and reviewed a copy of the in-home service standards;

8. Statement identifying the employee's position, including whether the employee performs administrative duties for the provider or delivers services to clients;

9. Returned permanent ID for a terminated employee or documentation of why it is not available; and

10. Verification of the current Missouri certified nurse assistant, licensed practical nurse or registered nurse license including, at least, the license or certificate number;

[(C) Written plans for basic and in-service training; and] [(D)] (C) Accurate records documenting dates and amount of contributions received and expended. Records of contributions received should list the name of each contributor and the date and amount of the contribution. The contribution expenditure records should list the name and amount of the contribution. The contribution expenditure records should list the name and address of each client, dates of service delivery, time spent on each date, activities performed, aide's name and the client's signature for each date of service[.]; and

(D) Documentation of each Employee Disqualification List and criminal background screening sufficient to show the identity of the person who was screened, the dates the screening was requested and completed and the outcome of the screening.

AUTHORITY: *section[s 536.023 and] 660.050, RSMo [Supp. 1997] 2000. Original rule filed Sept. 1, 1994, effective April 30, 1995. Amended: Filed Dec. 15, 1997, effective July 30, 1998. Amended: Filed Sept. 14, 2001.*

PUBLIC COST: *This proposed amendment is estimated to cost public entities; County Health Departments, and other political subdivisions, eight thousand one hundred dollars (\$8,100) annually in the aggregate. A detailed fiscal note, which estimates the cost of compliance with this amendment, has been filed with the secretary of state and attached hereto.*

PRIVATE COST: *This proposed amendment is estimated to cost private entities eighty-nine thousand four hundred dollars (\$89,400) annually in the aggregate. A detailed fiscal note, which estimates the cost of compliance with this amendment, has been filed with the secretary of state and attached hereto.*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with Linda Allen, Director, Division of Health and Senior Services, PO Box 1337, Jefferson City, MO 65103-1337. To be considered, comment must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: **19 - Department of Health and Senior Services**
Division: **15 - Division of Senior Services**
Chapter: **07 - In-Home Service Standards**
Type of Rulemaking: **Proposed Amendment**
Rule Number and Name: **19 CSR 15-7.021 In-Home Service Standards**

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
County Health Departments and Other Political Subdivisions	\$8,100.00 annually
Total	\$8,100.00 annually

III. WORKSHEET

Existing In-Home Services Providers:

The costs of the proposed amendment to the in-home services standards would affect approximately 27 existing public County Health Departments and other political subdivisions who are In-Home Service Providers.

IV. ASSUMPTIONS:

The primary costs to providers will be incurred for the following revised requirements:

1. The provider agency will be required to maintain a commercial general liability insurance policy which covers all places of business and all clients, employees and volunteers. This insurance will provide coverage for no less than \$1,000,000 per occurrence and \$3,000,000 aggregate. The provider must also maintain a professional liability insurance policy. The policy provides coverage for no less than \$1,000,000 per occurrence and \$3,000,000 aggregate.
 - Based on information provided by insurance professionals, the division estimates the total base cost of the annual premiums for both policies would be approximately \$1500. Additional premium costs are incurred based on number of employees and hours worked. The additional premium is calculated at approximately \$.10 per employee per hour. The current rule requires insurance on all employees connected with the delivery and performance of in-home services in the client's home, but does not specify minimum coverages. Insurance professionals indicated that "entry level" coverages of \$300,000 per occurrence and \$600,000 aggregate have a base cost of \$1200 to \$1300. According to insurance professionals, minimum

coverages of \$1,000,000 per occurrence and \$3,000,000 aggregate are standard in the industry. While some providers already have the minimum coverages required by this amendment, it is impossible to estimate how many have such minimums. Further, it is impossible for the division to estimate the number of employees and number of hours per provider in order to calculate the additional premium per provider. A provider may make this calculation based on its own staffing. Therefore, based on available information, the division has included all providers in its calculation and assumes the annual base cost of per provider to secure the increased minimums would be \$300. Maximum fiscal impact is, therefore, estimated at \$8,100.00 (27 providers x \$300) annually in the aggregate.

2. This number of providers will fluctuate as entities enter and exit the marketplace. Employees of the providers deliver in-home services to clients authorized for services by the division as an alternative to care in a more restrictive care setting.
3. The division is not able to determine the number of in-home providers who have insurance coverage as proposed in the rule amendment. Therefore the cost was applied to all existing in-home providers.
4. Any other costs not identified within this fiscal note are unforeseeable and unquantifiable.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: **19 - Department of Health and Senior Services**
Division: **15 - Division of Senior Services**
Chapter: **07 - In-Home Services Standards**
Type of Rulemaking: **Proposed Amendment**
Rule Number and Name: **19 CSR 15-7.021 In-Home Services Standards**

II. SUMMARY OF FISCAL IMPACT

Estimated number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
276	In-Home Providers (for-profit)	\$82,800.00 annually
22	In-Home Providers (not-for-profit)	\$6,600.00 annually
	Total:	\$89,400.00 annually

III. WORKSHEET

Existing In-Home Services Providers:

The costs of the proposed amendment to the in-home services standards would affect approximately 298 existing private in-home service providers, which includes 22 not-for-profit agencies and 276 for-profit agencies.

IV. ASSUMPTIONS:

The primary costs to providers will be incurred for the following revised requirements:

1. The provider agency will be required to maintain a commercial general liability insurance policy which covers all places of business and all clients, employees and volunteers. This insurance will provide coverage for no less than \$1,000,000 per occurrence and \$3,000,000 aggregate. The provider must also maintain a professional liability insurance policy. The policy provides coverage for no less than \$1,000,000 per occurrence and \$3,000,000 aggregate.
 - Based on information provided by insurance professionals, the division estimates the total base cost of the annual premiums for both policies would be approximately \$1,500. Additional premium costs are incurred based on number of employees and hours worked. The additional premium is calculated at approximately \$.10 per employee per hour. The current rule requires insurance on all employees connected with the delivery and performance of in-home services in the client's home, but does not specify minimum coverages. Insurance professionals indicated that "entry level" coverages of \$300,000 per occurrence and \$600,000 aggregate have a base cost of \$1,200 to \$1,300. According to insurance professionals, minimum coverages of \$1,000,000 per occurrence and \$3,000,000 aggregate are standard in the industry. While

some providers already have the minimum coverages required by this amendment, it is impossible to estimate how many have such minimums. Further, it is impossible for the division to estimate the number of employees and number of hours per provider in order to calculate the additional premium per provider. A provider may make this calculation based on its own staffing. Therefore, based on available information, the division has included all providers in its calculation and assumes the annual base cost of per provider to secure the increased minimums would be \$300. Maximum fiscal impact is, therefore, estimated at \$89,400.00 (298 providers x \$300) annually in the aggregate.

2. Section (5)(A) of the proposed amendment requires providers applying for contracts with the division to provide copies of various business records including certificates of good standing, registration of fictitious name, bylaws, operating and management agreements. The division has considered the costs but has determined that they are insignificant.

3. This number of providers will fluctuate as entities enter and exit the marketplace. Employees of the providers deliver in-home services to clients authorized for services by the division as an alternative to care in a more restrictive care setting.

4. The division is not able to determine the number of in-home providers who have insurance coverage as proposed in the rule amendment. Therefore the cost was applied to all existing in-home providers.

5. Any other costs not identified within this fiscal note are unforeseeable and unquantifiable.

**Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 1—Financial Solvency and Accounting
Standards**

PROPOSED AMENDMENT

20 CSR 200-1.160 Valuation of Life Insurance Policies. The department proposes to amend sections (3)(B)3.I.(I) and (3)(B)3.I.(II) and to add new language in (3)(B)3.I.(III).

PURPOSE: The purpose of the amendment is to require the filing of certain actuarial opinions with the director of the Department of Insurance. These actuarial opinions are already required annually. Accordingly, the purpose of the amendment is solely to provide the means by which such opinions are to be filed with the director.

(3) General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves.

(B) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this rule and promulgated by rule by the director). If select mortality factors are elected, they may be:

1. The ten (10)-year select mortality factors incorporated into section 376.380, RSMo, and 20 CSR 400-1.110, 20 CSR 400-1.120 and 20 CSR 400-1.130;

2. The select mortality factors in the Appendix of this rule;

3. For durations in the first segment, X percent of the select mortality factors in the Appendix, subject to the following:

A. X may vary by policy year, policy form, underwriting classification, issue age or any other policy factor expected to affect mortality experience;

B. X shall not be less than twenty percent (20%);

C. X shall not decrease in any successive policy years;

D. X is such that, when using the valuation interest rate used for basic reserves, part (I) is greater than or equal to part (II):

(I) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(II) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

E. X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date;

F. The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of paragraph (B)3.;

G. The appointed actuary may decrease X at any valuation date as long as X does not decrease in any successive policy years and as long as it continues to meet all the requirements of paragraph (B)3. of this section;

H. The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums; and

I. If X is less than one hundred percent (100%) at any duration for any policy, the following requirements shall be met:

(I) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of section 20 CSR 200-1.116(6); *[and]*

(II) The appointed actuary shall annually opine for all policies subject to this rule as to whether the mortality rates resulting from the application of X meet the requirements of paragraph (B)3. of this section. This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience[.]; **and**

(III) The company shall file any opinion(s) required by parts (I) or (II) of this subparagraph with the director of the Department of Insurance as an attachment or attachments to and at the same time as the company's annual statement to which such opinion(s) relate.

4. Any other table of select mortality factors adopted by the NAIC after the effective date of this rule and promulgated by rule by the director for the purpose of calculating deficiency reserves.

AUTHORITY: sections 374.045[, RSMo Supp. 1999] and 376.676, RSMo 2000. Original rule filed June 15, 2000, effective Jan. 1, 2001. Amended: Filed Sept. 5, 2001.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 9:30 a.m. on November 20, 2001. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on November 20, 2001. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 526-4636 at least five (5) working days prior to the hearing.

**Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 6—Surplus Lines**

PROPOSED RULE

20 CSR 200-6.600 Licensing Requirements

PURPOSE: The purpose of this rule is to prescribe procedures to be followed in assessing the required bond amount posted with the department by, and the licensing of, a surplus lines licensee pursuant to section 384.043, RSMo.

(1) Examination Requirements. As used in section 384.043, RSMo, the qualifying examination for a nonresident who holds a surplus lines license in his/her home state shall be the home state's surplus lines examination or the home state's fire and casualty

examination, whichever is applicable. If the applicant does not hold a surplus lines license in his/her home state, the qualifying examination shall be the Missouri surplus lines examination.

(2) Bonding Requirement. Every licensee required to post a bond with the director pursuant to section 384.043.2(4), RSMo, shall conduct an annual review of the licensee's tax liability required by section 384.057, RSMo, for the previous tax year to determine the appropriate amount of the bond to be posted with the director as required by section 384.043.2(4), RSMo. If such review indicates that a change in bond amount is required, an updated bond shall be filed with the department before April 16 of each year with the licensee's annual premium tax payment made pursuant to section 384.059, RSMo. Should tax liability for the previous year change after April 16, an updated bond to reflect the new tax liability shall be filed within thirty (30) days after notification from the Department of Insurance.

(3) In assessing the amount of tax liability to be considered for purposes of section 384.043.2(4), RSMo, a licensee shall consider his/her tax liability in their home state for the previous tax year. Licensees who have incurred tax liability in the state of Missouri during the previous tax year shall utilize their tax liability in the state of Missouri to determine the amount of the bond required by section 384.043.2(4).

AUTHORITY: section 374.045, RSMo 2000. Original rule filed Sept. 5, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 9:30 a.m. on November 20, 2001. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on November 20, 2001. Written statements shall be sent to Kimberly A. Grinston, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

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